



DTLA CVP-2 SERVICE PROVIDER LICENSE AGREEMENT

This DTLA CVP-2 SERVICE PROVIDER LICENSE AGREEMENT, (“Agreement”) is effective as of the latest date set out on the signature page hereof (the “Effective Date”) by and between Digital Transmission Licensing Administrator, LLC, a Delaware limited liability company (“DTLA”) and the “CVP-2 Service Provider” which is named immediately below:

Name of CVP-2 Service Provider:	
Description of CVP-2 Service Provider’s Business	
Name of Contact Person:	
Contact Person’s Address, Telephone number, Fax number, E-mail Address:	
Location of Principal Office:	
Jurisdiction of CVP-2 Service Provider’s Formation:	
Year of Formation	

BACKGROUND

- A. The Founders have developed a certain method for encryption, decryption, key exchange, authentication, and renewability for purposes of protecting certain digital content from unauthorized interception, retransmission and copying.
- B. The Founders have licensed the method to DTLA for purposes of further licensing the system and administering such licenses.
- C. CVP-2 Service Provider wishes to receive a license, subject to the terms and conditions set forth in this Agreement for the purpose of utilizing DTLA’s CVP-2 Service Provider Keying Material in their Qualified Service.

Therefore, DTLA and CVP-2 Service Provider agree as follows:

1. DEFINITIONS.

In addition to terms defined elsewhere in this Agreement, the following terms shall have the following meanings. All definitions herein shall apply equally to their singular and plural forms, all pronouns shall apply without regard to gender, and all references to Sections and Exhibits shall be deemed to be references to Sections of, and Exhibits to, this Agreement unless the context shall otherwise require.

1.1 **“Affiliate”** means with respect to any person or entity, any other person or entity directly or indirectly controlling or controlled by or under direct or indirect common control with such person or entity. **“Control”** means the possession of beneficial ownership of more than 50% of the stock or other similar interest entitled to vote for election of the Board of Directors or similar managing authority.

1.2 **“Compliant”** refers to a service which is in compliance with all applicable rules set forth in this Agreement, including for the avoidance of doubt, the Robustness Rules.

1.3 **“Confidential Information”** means Proprietary Information that is either marked “confidential” or “proprietary” when disclosed in written form or indicated as “confidential” or “proprietary” when disclosed or orally and confirmed in writing within thirty (30) days after such disclosure.

1.4 **“CVP-2 Addendum Adopter”** means an entity that has executed with DTLA an addendum to its “Digital Transmission Protection License Agreement” (an “Adopter Agreement”) substantially in the form of the DTCP CVP-2 Certificate Addendum to Adopter Agreement, for so long as such addendum remains in force.

1.5 **“CVP-2 Service Provider”** means the entity named at the beginning of this Agreement and includes its Affiliates.

1.6 **“CVP-2 Service Provider Private Key”** means the private key of the CVP-2 Service Provider Keying Material.

1.7 **“CVP-2 Service Provider Keying Material”** means DTLA CVP-2 Service Provider Certificate and corresponding private/public key pair, DTLA Root Certificate Authority Certificate, and DTLA CVP-2 Service Provider Certificate Authority Certificate, as defined in DTLA CVP-2 Specification.

1.8 **“CVP-2 Test Server Adopter”** means any entity that has executed a “DTLA Authentication Test Server License Agreement” and delivered it to DTLA or its designee.

1.9 **“DLNA”** means the Digital Living Network Alliance.

1.10 **“DLNA CVP-2 Guidelines”** means the guidelines published by DLNA pertinent to a CVP-2 Client and CVP-2 Server in the documents entitled “DLNA Guidelines Part 5: Device Profiles” dated March, 2014 and the referenced “DLNA Guidelines Part 7: Authentication” dated March, 2014, as may be amended by DLNA from time to time.

1.11 **“DLNA CVP-2 Reference Server”** means a test server that has been certified by DLNA as a reference server under the DLNA CVP-2 Guidelines for the purpose of testing the CVP-2 authentication function of a DLNA CVP-2 client.

1.12 **“DTLA CVP-2 Specification”** means the specification entitled “DTLA CVP-2 Specification” release 1.0 specification Volume 1 as it may be amended by DTLA from time to time pursuant to Section 4.

1.13 **“Fellow CVP-2 Service Provider”** means CVP-2 Service Provider and any other entity that has executed an agreement with DTLA that contains substantially similar terms as this Agreement (a **“CVP-2 Service Provider Agreement”**) and delivered it to DTLA or its designee.

1.14 **“Founders”** means Hitachi Maxell Ltd., Intel Corporation, Panasonic Corporation, Sony Corporation, and Toshiba Corporation.

1.15 **“Generator”** means DTLA or an entity that has been retained by DTLA to generate certain CVP-2 Service Provider Keying Material for use by CVP-2 Service Provider or Fellow CVP-2 Service Providers.

1.16 **“Highly Confidential Information”** means Proprietary Information that is marked “Highly Confidential Information” when disclosed in written form or is otherwise designated as such hereunder. The CVP-2 Service Provider Private Key shall at all times be deemed Highly Confidential Information.

1.17 **“Necessary Claims”** means claims of a patent or patent application relating to the DTLA CVP-2 Specification that must be infringed in order to make a product or service that complies with any portion of the DTLA CVP-2 Specification, which are owned or controlled by DTLA, any Founder or any Fellow CVP-2 Service Provider or any of their respective Affiliates. “Necessary Claims” do not include any claims relating to semiconductor manufacturing technology; claims relating to aspects of any technology, standard or product that is not itself part of the DTLA CVP-2 Specification (including, by way of example, CSS, MPEG, IEEE 1394 and analog copy protection systems) even though such technology, standard or product may otherwise be mentioned or required by the DTLA CVP-2 Specification; claims with regard to which it would be possible to build a product in compliance with the DTLA CVP-2 Specification without infringing such claim (even if in the same patent as Necessary Claims); or claims which, if licensed, would require a payment of royalties by the licensor to unaffiliated third parties.

1.18 **“Procedural Appendix”** means that document of the same name attached hereto which is hereby incorporated into this Agreement by reference, as may be amended by DTLA from time to time.

1.19 **“Proprietary Information”** means any and all information relating to the DTLA CVP-2 Specification made available to CVP-2 Service Provider, including for the avoidance of doubt, the CVP-2 Service Provider Keying Material, directly by DTLA or its designees or representatives, including, without limitation, DTLA CVP-2 Specification, software, hardware, firmware,

documentation, designs, flow charts, technical data, outlines, blueprints, notes, drawings, prototypes, templates, systems, manuals, know-how, processes and methods of operation.

1.20 **“Qualified Service”** means a service which will embody a portion of the DTLA CVP-2 Specification to allow implementation of CVP-2 Service Provider Keying Material in such service that will be operated and maintained by CVP-2 Service Provider in compliance with the DLNA CVP-2 Guidelines.

1.21 **“Robustness Rules”** means the requirements set out in Exhibit B, as such exhibit may be amended by DTLA from time to time pursuant to Section 4.

2. FEES.

2.1 **Annual Administration Fee and Certificate Fee.** Within thirty (30) days of the Effective Date, CVP-2 Service Provider shall pay DTLA a nonrefundable sum in the amount of the Annual Administration Fee set out in the Procedural Appendix (the “Annual Administration Fee”). CVP-2 Service Provider shall not be entitled to any refund thereof for any reason. CVP-2 Service Provider shall pay DTLA the “Per Certificate Fees” set out on the Procedural Appendix in accordance with the procedures for ordering the CVP-2 Service Provider Keying Material specified in the Procedural Appendix. Upon each anniversary of the Effective Date, or such other date as specified in the Procedural Appendix (the “Annual Payment Date”), CVP-2 Service Provider shall pay DTLA the Annual Administration Fee for the following year (or, in the final year of the Term, such portion of the Annual Administration Fee as is specified in the Procedural Appendix). DTLA may, upon at least thirty (30) days notice to CVP-2 Service Provider, modify the Annual Administration Fee and Per Certificate Fees payable for the period beginning on the next Annual Payment Date, provided that any increase in such fees shall not exceed an amount commensurate with any increase in DTLA’s costs (including but not limited to the cost of inflation).

2.2 **Delivery of CVP-2 Service Provider Keying Material.** At any time after CVP-2 Service Provider has paid the Administration Fee, CVP-2 Service Provider may order the CVP-2 Service Provider Keying Material from DTLA, and upon CVP-2 Service Provider’s payment of the applicable Certificate Fees, DTLA shall deliver the requested CVP-2 Service Provider Keying Material to CVP-2 Service Provider. As part of the consideration for delivery of the CVP-2 Service Provider Keying Material to CVP-2 Service Provider, CVP-2 Service Provider represents that it has a bona fide intent to utilize the CVP-2 Service Provider Keying Material for purposes of the Qualified Service for use in compliance with the DLNA CVP-2 Guidelines.

2.3 **Use of Reference Server.** CVP-2 Service Provider may acquire for its own use and may use a DLNA CVP-2 Reference Server subject to the following conditions:

- (a) Service Provider shall use such DLNA CVP-2 Reference Server only for the purposes of development and testing, and acknowledges and agrees that it shall not use such DLNA CVP-2 Reference Server in commerce to deliver audio or audiovisual content to end users, including but not limited to the delivery of Commercial Entertainment Content to subscribers; and,

- (b) Service Provider shall not transfer title or possession of such DLNA CVP-2 Reference Server, without prior express written permission from DTLA, to any person other than a CVP-2 Addendum Adopter, a Fellow CVP-2 Service Provider, a CVP-2 Test Server Adopter, DLNA, or DTLA.

CVP-2 Service Provider further acknowledges that DTLA has the right to revoke any DTLA CVP-2 Service Provider Certificate that has been distributed in any product in breach of the obligations of this Section 2.3.

3. DLNA MEMBER STATUS AND AUTHORITY TO OPERATE DLNA SERVICE. CVP-2 Service Provider represents and warrants that CVP-2 Service Provider is a member of DLNA in good standing. If at any time, for any reason, CVP-2 Service Provider (a) ceases to be a member of DLNA in good standing, or (b) ceases to operate, or to have a bona fide intent to operate, a Qualified Service, then CVP-2 Service Provider shall promptly notify DTLA, and shall comply with DTLA instructions regarding the termination of this agreement including the return or destruction of all CVP-2 Service Provider Keying Material and Proprietary Information as set forth in Section 11.2 (Effect of Termination) below.

4. DTLA CVP-2 SPECIFICATION; ROBUSTNESS RULES.

4.1 Delivery. Upon CVP-2 Service Provider's execution hereof and DTLA's receipt of the applicable fee(s), DTLA shall cause to be distributed to CVP-2 Service Provider the relevant portions of Proprietary Information and/or the DTLA CVP-2 Specification that CVP-2 Service Provider has not previously received.

4.2 Compliance with DTLA CVP-2 Specification and Robustness Rules. CVP-2 Service Provider shall comply with all mandatory portions of the DTLA CVP-2 Specification, and shall comply with Robustness Rules, with respect to implementation of the CVP-2 Service Provider Keying Material in its Qualified Service.

4.3 Changes. The DTLA CVP-2 Specification and the Robustness Rules may be amended from time to time by DTLA only in accordance with this Section 4.3 and Section 4.4, below. CVP-2 Service Provider shall be required to comply with all applicable amendments to DTLA CVP-2 Specification and the Robustness Rules that impact implementation of the CVP-2 Service Provider Keying Material in CVP-2 Service Provider's Qualified Service within twelve (12) months after notification of the changes have been sent as specified herein or, in extraordinary cases, within such shorter or longer period specified by DTLA.

4.4 Types of Change(s)/Notice. DTLA may make changes to the DTLA CVP-2 Specification that are reasonably necessary to correct any errors in the DTLA CVP-2 Specification with respect to use for purposes of the DLNA protocol and/or that are necessary to implement any changes to the DLNA Guidelines or requirements for services utilizing the CVP-2 Service Provider Keying Material.

5. LICENSES.

5.1 **License.** Subject to CVP-2 Service Provider's compliance with all material provisions hereof, including payment of all fees required, DTLA grants to CVP-2 Service Provider (including its Affiliates) a nonexclusive, nontransferable, non-sublicenseable (except to entities that may make products for use in CVP-2 Service Provider's Qualified Service, and only at the direction of CVP-2 Service Provider), worldwide sublicense for the Term of this Agreement, under the Founders' copyrights and trade secrets (including for the avoidance of doubt, for use as are necessary for, or appurtenant to, utilization of the CVP-2 Service Provider Keying Material in CVP-2 Service Provider's Qualified Service) to utilize the technologies, values and algorithms contained in, and as described in, the DTLA CVP-2 Specification for use in CVP-2 Service Provider's Qualified Service and to make or have made any products that are necessary in the same.

5.2 **RAND Commitment from Founders.** DTLA represents that each Founder has represented to DTLA that, subject to CVP-2 Service Provider's compliance with all material provisions hereof, such individual Founder will license its Necessary Claims (including for the avoidance of doubt, use of the relevant CVP-2 Service Provider Keying Material) under reasonable terms and conditions that are free of unfair discrimination including, a nonexclusive, nontransferable, worldwide license under its Necessary Claims, in such jurisdictions as the Founder owns such rights, to allow CVP-2 Service Provider to implement the DTLA CVP-2 Specification pursuant to the terms of this Agreement, for the Term of this Agreement, for use in CVP-2 Service Provider's Qualified Service; the Founder representation set forth above does not extend to any part or function of a service in which is a portion of a Qualified Service that is not itself a part of the Qualified Service or for which there exists a non-infringing alternative.

5.3 **RAND Commitment from CVP-2 Service Provider to Fellow CVP-2 Service Providers.** CVP-2 Service Provider shall grant to each Fellow CVP-2 Service Provider, under reasonable terms and conditions that are free of unfair discrimination, a nonexclusive, nontransferable, worldwide license, under CVP-2 Service Provider's Necessary Claims, to allow such Fellow CVP-2 Service Provider to implement the DTLA CVP-2 Specification as delivered under such Fellow CVP-2 Service Provider's CVP-2 Service Provider Agreement, for use in such Fellow CVP-2 Service Provider's Qualified Service. For the avoidance of doubt, DTLA acknowledges that each Fellow CVP-2 Service Provider is obligated under its CVP-2 Service Provider Agreement to license its Necessary Claims to Fellow CVP-2 Service Providers on substantially similar terms as this Section 5.3.

5.4 **RAND Commitment from CVP-2 Service Provider to DTLA and the Founders.** CVP-2 Service Provider, on behalf of itself and its Affiliates shall grant to DTLA, each Founder and its respective Affiliates, under CVP-2 Service Provider's Necessary Claims and under reasonable terms and conditions that are free of unfair discrimination, in such jurisdiction in which CVP-2 Service Provider owns such Necessary Claims and for the life of such Necessary Claims, a license (x) to engage in activities in the licensing of the CVP-2 Service Provider Keying Material and DTLA CVP-2 Specification and (y) as those Necessary Claims may be used in the operation of facilities for purposes of generating and distributing CVP-2 Service Provider Keying Material, including for the avoidance of doubt, the operation of any signing facility and for purposes of taking any action under this Agreement or under any Fellow CVP-2 Service Provider's similar agreement.

5.5 Scope of Use. The license granted by DTLA in Section 5.1 and the Founders' covenants to license described in Section 5.2 shall, in each case, extend only to CVP-2 Service Provider and only for implementation of the DTLA CVP-2 Specification in CVP-2 Service Provider's Qualified Service, and shall not extend to implementation of any portion of the DTLA CVP-2 Specification other than for enabling the implementation of CVP-2 authentication as is defined in the DLNA Guidelines in CVP-2 Service Provider's Qualified Service. Further, the sublicense granted by DTLA in Section 5.1 and the covenants to license described in Sections 5.2-5.4 shall not extend to aspects of any technology, standard or product that is not itself part of the DTLA CVP-2 Specification (including, by way of example, CSS, MPEG, IEEE 1394 and analog copy protection systems) even though such technology, standard or product may be otherwise mentioned or required by the DTLA CVP-2 Specification or Robustness Rules

5.6 Proper Use. The license granted by DTLA in Section 5.1 and the Founders' covenants to license described in Section 5.2 are subject to and conditioned on the requirements that CVP-2 Service Provider shall not operate a service (a) under color of this Agreement, or (b) using Confidential and Highly Confidential Information, where such service is designed to circumvent the requirements or effectiveness of the DTLA CVP-2 Specification.

6. [RESERVED.]

7. CONFIDENTIALITY.

7.1 Permitted Use. For avoidance of doubt, all references to "Proprietary Information" in this Agreement shall be deemed to include Confidential Information and Highly Confidential Information.

7.2 Use Restrictions.

7.2.1 CVP-2 Service Provider shall use Proprietary Information (and tangible embodiments thereof) solely for purposes of its own implementation of the DTLA CVP-2 Specification in accordance with the terms of this Agreement, and shall not intentionally copy, and shall not intentionally memorize, Proprietary Information in order to copy the methods disclosed therein.

7.2.2 CVP-2 Service Provider shall not use any mentally-retained recollections of Proprietary information to circumvent the methods disclosed in Proprietary Information or to circumvent any obligations under this Agreement.

7.3 Highly Confidential Information. CVP-2 Service Provider shall maintain the confidentiality of Highly Confidential Information in the following manner:

7.3.1 CVP-2 Service Provider shall employ procedures for safeguarding Highly Confidential Information at least as rigorous as CVP-2 Service Provider would employ for its own most highly confidential information, such procedures to include, at a minimum: (1) maintaining on CVP-2 Service Provider's premises a secure location in which any and all Highly Confidential Information shall be stored; (2) such secure location shall be accessible only by authorized employees; (3) employees shall sign in and out each time such employees visit such secure

location; and (4) when Highly Confidential Information is not in use, such information shall be stored in a locked safe at such secure location.

7.3.2 CVP-2 Service Provider may disseminate Highly Confidential Information only to (a) the strictest minimum possible number of the regular employees and individuals retained as regular independent contractors subject to confidentiality obligations equivalent to those applicable to regular employees of CVP-2 Service Provider: (1) who have an absolute need to know such Highly Confidential Information in order to enable CVP-2 Service Provider to implement the DTLA CVP-2 Specification in accordance with the terms hereof, including for the avoidance of doubt, the Robustness Rules, DTLA CVP-2 Specification; and, (2) who are bound in writing by obligations of confidentiality sufficient to protect the Highly Confidential Information in accordance with the terms of this Agreement; provided that CVP-2 Service Provider shall be liable to DTLA for any failure by any such employee or individual to maintain the confidentiality of Confidential Information in accordance with the terms of this section 7. Further, CVP-2 Service Provider may disseminate Highly Confidential Information to a third party that is providing services to CVP-2 Service Provider pursuant to the right under Section 5.1 to “have made” any products that are necessary, for use in CVP-2 Service Provider’s Qualified Service, provided that such third party is either (i) a Fellow CVP-2 Service Provider, or (ii) has executed a nondisclosure agreement with DTLA consistent with the provisions hereof that authorizes such third party to receive such Highly Confidential Information.

7.3.3 Except as expressly stated in the Robustness Rules, CVP-2 Service Provider shall not make any copies of any Highly Confidential Information. CVP-2 Service Provider may request additional copies of such information. DTLA may in its sole discretion fulfill any such request.

7.4 **Confidential Information.** CVP-2 Service Provider may disclose Confidential Information only to (i) regular employees and individuals retained as independent contractors subject to confidentiality obligations equivalent to those applicable to regular employees of CVP-2 Service Provider who have a reasonable need-to-know and are bound in writing by obligations of confidentiality sufficient to protect the Confidential Information in accordance with the terms of this Agreement, (ii) Fellow CVP-2 Service Providers, (iii) entities subject to a non-disclosure agreement with DTLA or CVP-2 Service Provider that includes provisions substantially in the form of the provisions of this section 7 that relate to Confidential Information, provided that CVP-2 Service Provider may disclose to such parties only information that such parties are entitled to receive under their CVP-2 Service Provider Agreement or nondisclosure agreement and, in the event that any such entity is not a Fellow CVP-2 Service Provider, CVP-2 Service Provider shall be liable for any failure by such entity to maintain the confidentiality of Confidential Information in accordance with the terms of this section 7; or (iv) CVP-2 Service Provider's attorneys, auditors or other agents who owe CVP-2 Service Provider a duty of confidentiality and are bound to maintain such information in confidence as a result of a fiduciary relationship. CVP-2 Service Provider shall use the same degree of care, but no less than a reasonable degree of care, to avoid unauthorized disclosure or use of Confidential Information as such party employs with respect to its comparably important confidential information. Notwithstanding the foregoing, CVP-2 Service Provider and DTLA may disclose CVP-2

Service Provider's status (or lack of it) as a licensee of DTCP, and such disclosure shall not constitute Confidential Information.

8. GENERAL.

8.1 Assistance with Claims and Actions Relating to Improper Acts. CVP-2 Service Provider shall make all reasonable efforts to assist DTLA in relation to any claim, action, suit, proceeding, or litigation with respect to any improper or unauthorized acts of any of its former employees or of such third parties identified in Section 7.3 and 7.4.

8.2 Contact Person and Provision of DTLA Information. CVP-2 Service Provider shall designate an employee or employees who shall receive all Confidential Information and Highly Confidential Information disclosed by DTLA.

8.3 Notification of Unauthorized Use or Disclosure. CVP-2 Service Provider shall notify DTLA in writing immediately upon discovery of any unauthorized use of Proprietary Information and any unauthorized disclosure of Confidential Information or Highly Confidential Information, and will cooperate with DTLA in every reasonable way to regain possession of Confidential Information and Highly Confidential Information and prevent its further unauthorized disclosure and to prevent further unauthorized use of Proprietary Information.

8.4 Disclosure Required by Law. If CVP-2 Service Provider is required by law, regulation or order of a court or other authority of competent jurisdiction to disclose Confidential Information or Highly Confidential Information, CVP-2 Service Provider shall notify DTLA as promptly as possible, and shall, upon such DTLA's request, reasonably cooperate in challenging or restricting the scope of such required disclosure.

8.5 Confidentiality Exceptions. The confidentiality restrictions contained in Section 7.1 and 7.2 shall not apply to information that CVP-2 Service Provider can demonstrate is either Confidential or Highly Confidential Information which: (i) is or becomes or has become generally known to the public through no breach of CVP-2 Service Provider's obligations owed to DTLA hereunder or the Founders and which DTLA failed to remove from public availability or to enjoin such public disclosure within 120 days after the date such information is or becomes generally known as set forth above; or (ii) is or has been developed by CVP-2 Service Provider's employees (whether independently or jointly with others) without having reliance on or use of (whether directly or through any intermediaries) to any such Confidential Information or Highly Confidential Information (or any translation, derivation or abstractions of Confidential Information or Highly Confidential Information) and without any breach of CVP-2 Service Provider's obligations to DTLA or the Founders, provided that the confidentiality restrictions shall continue to apply to the CVP-2 Service Provider Private Key provided to CVP-2 Service Provider; or (iii) is or has been disclosed to CVP-2 Service Provider by a third party which had developed (whether independently or jointly with others) such information without reliance on or use of (whether directly or through any intermediaries) to any Confidential Information or Highly Confidential Information and without any breach of any such third party's obligations to DTLA or the Founders.

9. PERIOD.

The confidentiality obligations set forth herein shall continue until the later of (i) three (3) years after the last commercial use of the technology licensed under “Digital Transmission Protection License Agreement” by DTLA; or (ii) the expiration of the last copyright that protects any DTCP-encrypted/ scrambled content which then exists in any country adhering to the agreement on trade related aspects of intellectual property rights of the world trade organization dated April 15, 1994.

10. OTHER TERMS.

10.1 No Reverse Engineering. Nothing herein shall be construed as an inducement or license for CVP-2 Service Provider to reverse engineer any products of any Fellow CVP-2 Service Provider or third party.

10.2 Compliance with Laws, Export. CVP-2 Service Provider will comply with all applicable rules and regulations of the United States, Japan and other countries and jurisdictions, including those relating to the export or re-export of commodities, software and technical data insofar as they relate to the activities under this Agreement. CVP-2 Service Provider agrees that commodities, software and technical data provided under this Agreement are subject to restrictions under the export control laws and regulations of the United States, Japan and other countries and jurisdictions, as applicable, including but not limited to the U.S. Export Administration Act and the U.S. Export Administration Regulations and the Japanese Foreign Exchange and Foreign Trade Law, and shall obtain any approval required under such laws and regulations whenever it is necessary for such export or re-export.

11. TERM/TERMINATION.

11.1 Termination. This Agreement shall be effective upon the Effective Date and shall continue until the fifth (5th) anniversary of the Effective Date (the “Term”) unless sooner terminated in accordance with any of the following events:

11.1.1 Termination by CVP-2 Service Provider. CVP-2 Service Provider shall have the right to terminate this Agreement at any time upon ninety (90) days’ prior written notice to DTLA.

11.1.2 Breach Capable of Cure. In the event that either party (i) materially breaches any of its obligations hereunder, which breach is not cured within thirty (30) days after written notice is given to the breaching party specifying the breach or (ii) repeatedly breaches any of its obligations hereunder and fails to cure and cease committing such repeated breaches within thirty (30) days after being given written notice specifying the breaches, then the party not in breach may, by giving written notice thereof to the breaching party, terminate this Agreement, upon the expiration of a thirty (30)-day period beginning on the date of such notice of termination.

11.1.3 Breach Not Capable of Cure. In the event of a material breach that is not capable of cure under the provisions of Section 11.1.2, the party not in breach may, by

giving written notice of termination to the breaching party, terminate this Agreement. Such termination shall be effective upon receipt of such notice of termination.

11.2 Effect of Termination. Upon termination or expiration of this Agreement, CVP-2 Service Provider shall immediately cease use of CVP-2 Service Provider Keying Material, including for the avoidance of doubt the CVP-2 Service Provider Private Key. Within thirty (30) days after termination or expiration of this Agreement, CVP-2 Service Provider shall return such CVP-2 Service Provider Keying Material, and shall as directed by DTLA: (i) return any and all other Proprietary Information to DTLA; or (ii) destroy any and all Proprietary Information in its possession, retaining no copies thereof, and certify such destruction in writing to DTLA.

11.3 Survival. Following termination of this Agreement for any reason, the following Sections shall survive: Section 1 (Definitions), 5.4 (RAND Commitment from CVP-2 Service Provider to DTLA and the Founders) (with respect to the DTLA CVP-2 Specification in effect as of the date of termination), 7 (Confidentiality), 8.1 (Assistance with Claims and Actions Relating to Improper Acts), 11.2 (Effect of Termination), this section 11.3 (Survival), 12 (Disclaimer and limitation of liability), 13 (Remedies), and 14 (Miscellaneous).

12. DISCLAIMER AND LIMITATION OF LIABILITY.

12.1 Generally. The following terms limit the ability of CVP-2 Service Provider to recover any damages from DTLA or the Founders in excess of fees actually paid to DTLA by CVP-2 Service Provider. These provisions are an essential part of the bargain, without which DTLA would not be willing to enter into this Agreement, nor would the Founders be willing to license their Necessary Claims.

12.2 Disclaimer. ALL INFORMATION, MATERIALS, KEYS, AND CERTIFICATES ARE PROVIDED “AS IS.” DTLA AND THE FOUNDERS AND GENERATOR MAKE NO REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EXPRESSLY DISCLAIM IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY EQUIVALENTS UNDER THE LAWS OF ANY JURISDICTION THAT MIGHT ARISE FROM ANY ACTIVITIES OR INFORMATION DISCLOSURES RELATING TO THIS AGREEMENT. DTLA, THE FOUNDERS AND GENERATOR FURTHER DISCLAIM ANY WARRANTY THAT ANY IMPLEMENTATION OF THE DTLA CVP-2 SPECIFICATION, IN WHOLE OR IN PART, WILL BE FREE FROM INFRINGEMENT OF ANY THIRD PARTY INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS.

12.3 Limitation of Liability. NEITHER DTLA NOR THE FOUNDERS NOR GENERATOR NOR ANY DIRECTOR, OFFICER, AGENT, MEMBERS, REPRESENTATIVES, EQUIVALENT CORPORATE OFFICIAL, OR EMPLOYEE OF ANY OF THEM ACTING IN THEIR CAPACITIES AS SUCH (COLLECTIVELY, THE “AFFECTED PARTIES”) SHALL BE LIABLE TO CVP-2 SERVICE PROVIDER FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF ANY CAUSE OF ACTION RELATING TO THIS AGREEMENT, OR BASED ON MAKING, USING, SELLING OR IMPORTING ANY PRODUCTS OF CVP-2 SERVICE PROVIDER

THAT IMPLEMENT PROPRIETARY INFORMATION, WHETHER UNDER THEORY OF CONTRACT, TORT, INDEMNITY, PRODUCT LIABILITY OR OTHERWISE. TO THE EXTENT THAT ANY COURT OF COMPETENT JURISDICTION RENDERS JUDGMENT AGAINST DTLA NOTWITHSTANDING THE ABOVE LIMITATION, THE AFFECTED PARTIES' AGGREGATE LIABILITY TO CVP-2 SERVICE PROVIDER IN CONNECTION WITH THIS AGREEMENT SHALL IN NO EVENT EXCEED THE AMOUNTS OF MONEY RECEIVED BY DTLA FROM CVP-2 SERVICE PROVIDER UNDER THIS AGREEMENT IN ANY ONE YEAR PERIOD.

13. REMEDIES.

13.1 Indemnification for Wrongful Acts of CVP-2 Service Provider. CVP-2 Service Provider shall indemnify and hold DTLA, the Founders and Generator, and their officers, members, representatives, agents, directors, equivalent corporate officials, and employees, harmless from and against any and all any losses, claims, actions, suits, proceedings or litigation, and any losses, deficiencies, damages, liabilities, costs and expenses including without limitation, reasonable attorneys' fees and all related costs and expenses, to be paid or otherwise incurred in connection with the defense of any claim, action, suit, proceeding or litigation, which result from any material breach of any covenant, agreement, representation or warranty herein or negligent acts committed by CVP-2 Service Provider.

13.2 Equitable Relief. DTLA and CVP-2 Service Provider agree and acknowledge that due to the unique nature of certain provisions hereof and the lasting effect of and harm from a breach of such provisions, including making available the means for widespread unauthorized copying of copyrighted content intended to be protected using the DTLA CVP-2 Specification, if CVP-2 Service Provider breaches its obligations hereunder, money damages alone may not adequately compensate an injured party, and that injury to such party may be irreparable, and that specific performance or injunctive relief is an appropriate remedy to prevent further or threatened breaches hereof.

13.3 Damages Measure and Limitation. The parties agree that it would be impossible to estimate the amount of damages in the event of certain breaches. In the event of a material breach by CVP-2 Service Provider (1) of the confidentiality provisions set forth in Section 7, CVP-2 Service Provider shall be liable for one million dollars; (2) that involves the manufacture or distribution of products or software under this Agreement that are necessary for operation of a Qualified Service that fail to protect any Highly Confidential Information provided by DTLA under this Agreement, CVP-2 Service Provider shall be liable in an amount equal to its profits on operation of such Qualified Service, and in no event less than one million dollars nor more than eight million dollars; and (3) that involves any other provision of this Agreement, CVP-2 Service Provider shall be liable in an amount equal to its profits on the affected Qualified Service, and in no event more than eight million dollars. The amounts payable by CVP-2 Service Provider in accordance with this Section 13.3 shall be DTLA's exclusive monetary remedies available for any and all such breaches by CVP-2 Service Provider, and such amounts shall be paid by CVP-2 Service Provider in lieu of any and all other monetary damages to DTLA relating to such breaches. For purposes of this Section 13.3, a series of substantially related events shall

constitute a single material breach. A breach shall be “material” only if it has resulted in or would be likely to result in commercially significant harm to Fellow CVP-2 Service Providers and/or other users of the technologies licensed by DTLA under the “Digital Transmission Protection License Agreement”, including but not limited to “Adopters” and “Content Participants” under that license agreement, or constitute a threat to the integrity or security of the technologies licensed under that license agreement. In addition, the following is a non-exclusive list of circumstances in which, standing alone, there is no material breach of the applicable provisions by CVP-2 Service Provider: (1) if no Confidential Information or Highly Confidential Information was released to a third party not permitted hereunder to have such information or could reasonably have been expected to have been released to such third party as a result of the breach; (2) if CVP-2 Service Provider maintains an internal program to assure compliance herewith (including a program to assure maintenance of inventory, samples, and confidentiality of information for purposes in addition to compliance with this Agreement), the breach was inadvertent or otherwise unintentional, and the breach did not have a material adverse effect on the integrity or security of the technologies licensed by DTLA under the “Digital Transmission Protection License Agreement” or the function of such technologies to protect content; (3) if CVP-2 Service Provider brought the breach to DTLA’s attention in a timely manner and such breach did not have a material adverse effect on the integrity or security of technologies licensed by DTLA under the “Digital Transmission Protection License Agreement” or the function of such technologies to protect content.

14. MISCELLANEOUS.

14.1 Ownership. All Proprietary Information and media containing Proprietary Information as provided by DTLA to CVP-2 Service Provider shall remain the property of DTLA or its suppliers. Except as expressly provided herein, this Agreement does not give CVP-2 Service Provider any license or other right to the Proprietary Information.

14.2 Entire Agreement. This Agreement, the exhibits hereto and the DTLA CVP-2 Specification constitute the entire Agreement between the parties hereto with respect to the subject matter hereof and supersede all prior oral, written or other agreements. Except as otherwise provided herein, this Agreement may not be modified except by written agreement dated subsequent to the date of this Agreement and signed by both parties.

14.3 Controlled Entities. CVP-2 Service Provider represents and warrants that it has, or will have, the authority to bind its Affiliates to the terms of this Agreement.

14.4 Money. All fees shall be paid to DTLA or to its order in United States dollars by wire transfer or such other means as DTLA may reasonably specify. If CVP-2 Service Provider is required by law to make any withholding from fees due to DTLA, it may make such withholding but shall provide DTLA, at the time of payment, with evidence of such withholding adequate to permit DTLA or its assignee to claim relevant tax credits under applicable treaties.

14.5 Assignment. The licenses granted hereunder are personal to CVP-2 Service Provider, and CVP-2 Service Provider’s rights under this Agreement shall not be assigned or otherwise

transferred except (a) with the written approval of DTLA (which shall not be unreasonably withheld) or (b) to a corporation controlling, controlled by or under common control with CVP-2 Service Provider or to the purchaser of all or substantially all of the outstanding capital stock or assets and obligations of CVP-2 Service Provider or to the surviving entity in a merger, reorganization, or other business combination and where notice of such assignment has been provided in advance to DTLA and where the surviving or acquiring company agrees in writing to be bound by this Agreement. Subject to the limitations set forth in this Agreement, this Agreement will inure to the benefit of and be binding upon the parties, their successors and permitted assigns. DTLA may assign or transfer this Agreement to a party that agrees to assume DTLA's obligations hereunder, and will provide CVP-2 Service Provider with written notice thereof.

14.6 Presumptions. In construing the terms of this Agreement, no presumption shall operate in either party's favor as a result of its counsel's role in drafting the terms or provisions hereof.

14.7 Governing Law; Jurisdiction. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED ENTIRELY IN SUCH STATE AND WITH THE LAWS OF THE UNITED STATES AS WOULD BE CONSTRUED BY A COURT SITTING IN THE SOUTHERN DISTRICT OF NEW YORK.

14.7.1 IN CONNECTION WITH ANY LITIGATION BETWEEN THE PARTIES HERETO OR IN CONNECTION WITH ANY CLAIM BROUGHT HEREUNDER ARISING OUT OF OR RELATING TO THIS AGREEMENT, EACH PARTY IRREVOCABLY CONSENTS TO: (i) THE EXCLUSIVE JURISDICTION AND VENUE IN THE FEDERAL AND STATE COURTS LOCATED IN THE COUNTY OF NEW YORK, NEW YORK; AND (ii) THE SERVICE OF PROCESS OF SAID COURTS IN ANY MATTER RELATING TO THIS AGREEMENT BY PERSONAL DELIVERY OR BY MAILING OF PROCESS BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, AT THE ADDRESSES SPECIFIED IN THIS AGREEMENT, OR TO THE AGENT TO BE APPOINTED PURSUANT TO THE SECTION, BELOW;

14.7.2 CVP-2 SERVICE PROVIDER'S AGENT IN THE STATE OF NEW YORK FOR ACCEPTANCE OF SERVICE OF PROCESS PROVIDED FOR UNDER THIS AGREEMENT SHALL BE:

IN THE EVENT CVP-2 SERVICE PROVIDER FAILS TO IDENTIFY AN AGENT ABOVE, THEN CVP-2 SERVICE PROVIDER AGREES TO WAIVE SUCH NOTICE

REQUIREMENT IN NEW YORK AND AGREES THAT NOTICE SHALL BE DEEMED EFFECTIVE IF DELIVERED TO THE ADDRESS LISTED ON THE FIRST PAGE OF THIS AGREEMENT AND SERVICE UPON SUCH LISTED PERSON SHALL BE TREATED AS IF SERVICE WAS EFFECTED IN NEW YORK.

14.7.3 CVP-2 SERVICE PROVIDER WAIVES ANY OBJECTION TO THE JURISDICTION, PROCESS, AND VENUE OF ANY SUCH COURT, AND TO THE EFFECTIVENESS, EXECUTION, AND ENFORCEMENT OF ANY ORDER OR JUDGMENT (INCLUDING, BUT NOT LIMITED TO, A DEFAULT JUDGMENT) OF SUCH COURT PERTAINING TO THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY THE LAW OF THE PLACE WHERE ENFORCEMENT OR EXECUTION OF ANY SUCH ORDER OR JUDGMENT MAY BE SOUGHT AND BY THE LAW OF ANY PLACE WHOSE LAW MIGHT BE CLAIMED TO BE APPLICABLE REGARDING THE EFFECTIVENESS, ENFORCEMENT, OR EXECUTION OF SUCH ORDER OR JUDGMENT, INCLUDING PLACES OUTSIDE OF THE STATES OF NEW YORK AND CALIFORNIA AND OF THE UNITED STATES.

14.8 **Notice.** All notices to be provided pursuant to this Agreement shall be given in writing and shall be effective when either served by personal delivery or upon receipt via certified mail, return receipt requested, postage prepaid, overnight courier service or sent by facsimile transmission with hard copy confirmation sent by certified mail, in each case to the party at the addresses set out herein.

14.9 **Severability; Waiver.** Should any part of this Agreement judicially be declared to be invalid, unenforceable, or void by any court of competent jurisdiction, the parties agree that the part or parts of this Agreement so held to be invalid, unenforceable, or void shall be reformed by such court without further action by the parties hereto but only to the extent necessary to make such part or parts valid and enforceable. A waiver by either of the parties hereto of any of the covenants to be performed by the other party or any breach thereof shall not be effective unless made in writing and signed by the waiving party and shall not be construed to be a waiver of any succeeding breach thereof or of any covenant herein contained.

14.10 **Most Favored Status.** DTLA will make available to CVP-2 Service Provider its substantive commitments or clarifications regarding the standard CVP-2 Service Provider Agreement through notice on the DTLA website or otherwise. DTLA also commits that the benefit of any of its clarifications or interpretations of language in the standard CVP-2 Service Provider Agreement will be extended to CVP-2 Service Provider in accordance with this Section 14.10. Where DTLA agrees to make a change to a particular Fellow CVP-2 Service Provider's standard CVP-2 Service Provider Agreement, such change shall be reflected in the next regular revision of the standard CVP-2 Service Provider Agreement and CVP-2 Service Provider will be given the ability to upgrade to such revised CVP-2 Service Provider Agreement. Prior to such time as it makes a revised or upgraded standard CVP-2 Service Provider Agreement available to all Fellow CVP-2 Service Providers that have executed a standard CVP-2 Service Provider

Agreement, where DTLA has agreed to include language in a particular Fellow CVP-2 Service Provider's standard CVP-2 Service Provider Agreement that is more favorable than that in the then-current version of the standard CVP-2 Service Provider Agreement, DTLA will not enforce the language in CVP-2 Service Provider's Agreement to the extent that such language is less favorable than that found in such Fellow CVP-2 Service Provider's Agreement. For purposes of this Section 14.10, "standard CVP-2 Service Provider Agreement" refers to an CVP-2 Service Provider Agreement under which a Fellow CVP-2 Service Provider receives a license with respect to activities that are the same as those activities licensed hereunder, but does not include, by way of example and not limitation, any CVP-2 Service Provider Agreement in which a Fellow CVP-2 Service Provider is not licensed to operate Qualified Service(s).

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

DTLA:

By:

Name:

Title:

Date:

CVP-2 Service Provider:

By:

Name:

Title:

Date:

Addresses for notices:

DTLA:

**c/o License Management International,
LLC**

225B Cochrane Circle

Morgan Hill, CA 95037

CVP-2 Service Provider:

Procedural Appendix

Unless otherwise expressly stated in this Procedural Appendix, all section references in this Procedural Appendix are references to sections of this Procedural Appendix.

Fee Schedule

A. Annual Administration Fee

Category	Annual Administration Fee (US \$)
CVP-2 Service Provider	\$18,000

B. Per Certificate Fees

(i). CVP-2 Service Provider Keying Material

Category		
DTLA CVP-2 Service Provider Keying Material		\$1,500

1. PROCEDURES FOR HANDLING CVP-2 SERVICE PROVIDER KEYING MATERIAL

Standards for the handling of CVP-2 Service Provider Keying Material will be supplied and CVP-2 Service Provider agrees to comply with all such standards. These will include, by way of example, requirements that such CVP-2 Service Provider Keying Material be kept in a secure place and that a limited number of individuals have access to them. CVP-2 Service Provider Private Keys are Highly Confidential Information.

2. PROCEDURE FOR ORDERING AND DELIVERY OF CVP-2 SERVICE PROVIDER KEYING MATERIAL

CVP-2 Service Provider will be supplied with a CVP-2 Service Provider Keying Material Order Guide which includes a form and associated tools for ordering CVP-2 Service Provider Keying Material.

A-2: Key Order Guide

EXHIBIT “B” ROBUSTNESS RULES

Applicability. This Exhibit B is applicable to all CVP-2 Service Providers offering Qualified Services.

1. Generally. CVP-2 Service Provider facilities and servers (hardware/software) shall be designed, configured and operated in a manner clearly designed to effectively frustrate attempts to compromise the confidentiality or integrity requirements, as set forth herein, while not compromising the availability of CVP-2 Service Provider’s Qualified Services by denying access to legitimate parties.

2. DESIGN AND OPERATION

2.1 Standard for Maintaining Confidentiality and Integrity. CVP-2 Service Provider shall utilize measures to protect Highly Confidential Information under this Agreement at least as rigorous as those that CVP-2 Service Provider utilizes to maintain similar confidential information in other audio/visual distribution service context(s) in which CVP-2 Service Provider operates a service, similar in nature, that if such confidential information was disclosed in those other context(s), would cause harm to that respective ecosystem. CVP-2 Service Provider facilities and server equipment shall be designed, configured and operated in a manner that is clearly designed to effectively frustrate attempts by unauthorized parties to (a) discover or reveal CVP-2 Service Provider Keying Material, and for the avoidance of doubt, the CVP-2 Service Provider Private Key, and other confidential values or (b) modify values requiring integrity for CVP-2 authentication. CVP-2 Service Provider shall be required to meet or exceed the following minimum security requirements as set forth in the following five paragraphs:

2.1.1 Copying of CVP-2 Service Provider Keying Material. CVP-2 Service Provider is permitted to generate copies of CVP-2 Service Provider Keying Material, for the avoidance of doubt, including CVP-2 Service Provider Private Keys, within a particular physical device or server, for performance reasons, and is permitted to create a backup copy of CVP-2 Service Provider Private Keys for secure offline storage. These copies of CVP-2 Service Provider Private Keys shall be subject to the requirements of this Exhibit B, which shall apply in full to such copies in the same manner as they would to the original CVP-2 Service Provider Keying Material. CVP-2 Service Provider shall promptly and securely destroy copies of CVP-2 Service Provider Keying Material when they are no longer required.

2.1.2 Accountability. CVP-2 Service Provider facilities shall be maintained so that all access to the system on which the CVP-2 Service Provider Keying Material reside(s), and in particular, all access to the CVP-2 Service Provider Keying Material itself/themselves, shall be logged. Further, all copying and destruction of CVP-2 Service Provider Keying Material as permitted under Section 2.1.1 above shall be

logged, and in such a way that examination of the log files shall permit the CVP-2 Service Provider or any other examiner of the log files to know how many copies of CVP-2 Service Provider Keying Material were in existence in what location at any previous moment in time. Audit tools shall be available for forensic examination of the log files. Sufficient measures shall be implemented to ensure the integrity of the log files.

2.1.3 Controls. CVP-2 Service Providers shall implement controls to reduce risk to a level that will result in the CVP-2 Service Provider facilities having the level of protection described in Section 3 or better. CVP-2 Service Providers shall define system components in terms of their security function and shall control their access to and by other components accordingly.

2.1.4 Policy. CVP-2 Service Providers shall create, implement and maintain a policy detailing the security objectives and methods that will be put in place in order to reduce risks to a level that will result in the CVP-2 Service Provider facilities having the level of protection described in Section 3 or better. This policy shall be consistent with the guidelines in ISO/IEC 27002 and any updated version of it. (As used herein ISO/IEC 27002 Information Security – Code of practice for information security management.)

2.1.5 Standards and Procedures. CVP-2 Service Providers shall create, implement and maintain security standards and procedures detailing how the policy will be implemented. These standards and procedures shall be consistent with the guidelines in ISO/IEC 27002 and any updated version of ISO/IEC 27002 Information Security – Code of practice for information security management.

3. Methods of Preserving Confidentiality, Secrecy and Integrity. CVP-2 Service Provider facilities shall be designed and operated using at least the following techniques in a manner that is clearly designed to effectively frustrate attempts to compromise the confidentiality or integrity of Highly Confidential Information, including but not limited to CVP-2 Service Provider Keying Material.

3.1 Software. Any portion of the CVP-2 Service Provider facilities capable of accessing Highly Confidential Information in usable form by Software shall include all of the characteristics set forth in Section 2 of this Exhibit B. For the purposes of these Robustness Rules, "Software" shall mean the implementation of DTLA CVP-2 Specification, through any computer program code consisting of instructions or data, other than such instructions or data that are implemented in Hardware. Such implementations shall:

3.1.1 Comply with Section 2 of this Exhibit B by a reasonable method including but not limited to: encryption, execution of a portion of the implementation in privileged or supervisor mode, execution on a hardened operating system, and/or embodiment in a secure physical implementation.

3.1.2 Be designed so that checking of the integrity of the component parts occurs such that modifications must be recorded and processes will promptly assess whether these modifications were authorized or unauthorized. For the purpose of this provision, a “modification” includes any change in, or disturbance or invasion of, features or characteristics, or interruption of processing, relevant to Section 1 of this Exhibit B. CVP-2 Service Provider shall describe in the security policy, standards and procedures (as described in Section 1) how this provision is satisfied.

3.2. **Hardware.** Any portion of the CVP-2 Service Provider facilities capable of accessing Highly Confidential Information in usable form in Hardware shall include all of the characteristics set forth in Section 2 of this Exhibit B. For the purposes of these Robustness Rules, “Hardware” shall mean a physical device, including a component, that implements DTLA CVP-2 Specification and that (i) does not include instructions or data other than such instructions or data that are permanently embedded in such device or component; or (ii) includes instructions or data that are not permanently embedded in such device or component where such instructions or data have been customized for such CVP-2 Service Provider facilities and/or can only be accessed under the control of the CVP-2 Service Provider by authorized parties. Such implementation shall:

3.2.1 Comply with Section 2 of this Exhibit B by any reasonable method including but not limited to embedding DTLA CVP-2 Service Provider Certificate in a Hardware Security Module (HSM) that provides the level of protection described in Section 3. CVP-2 Service Providers that wish to employ an HSM should use an HSM that meets FIPS 140-2 Level 3 or higher, or an equivalent level of protection as defined in an alternative internationally accepted standard.

3.2.2 Be designed such that attempts to remove, replace, or reprogram Hardware elements in a way that would compromise the implementation of DTLA CVP-2 Specification would pose a serious risk of rendering CVP-2 Service Provider’s facilities unable to perform CVP-2 authentication and would be promptly detected as described in Section 2.1.2.

3.3. **Hybrid.** The interfaces between Hardware and Software portions of CVP-2 Service Provider’s facilities shall be designed so that the Hardware portions comply with the level of protection that would be provided by a pure Hardware implementation, and the Software portions comply with the level of protection, which would be provided by a pure Software implementation.

4. ADVANCE OF TECHNOLOGY

Although an implementation of a CVP-2 Service Provider facility when designed may meet the above standards, subsequent circumstances may arise which, had they existed at the time of design of a particular CVP-2 Service Provider facility, would have caused such a facility to fail to comply with these Robustness Rules (“New Circumstances”). If CVP-2 Service Provider has (a) actual notice of

New Circumstances, or (b) actual knowledge of New Circumstances (the occurrence of (a) or (b) hereinafter referred to as “Notice”), then as quickly as reasonably possibly, but in no event later than six (6) months if a software upgrade is required and twelve (12) months if a hardware upgrade is required, CVP-2 Service Provider shall cease operation of CVP-2 Service Provider’s facilities that are not Compliant with the Robustness Rules in view of the then-current circumstances and shall only maintain a CVP-2 Service Provider facility that is compliant with the Robustness Rules in view of the then-current circumstances, whether these be new or upgraded CVP-2 Service Provider facilities. Notwithstanding the foregoing, CVP-2 Service Provider shall not be required to cease operation of or upgrade its facilities for a period of thirty-six (36) months following Service Provider’s commencement of operation of such facilities, provided that such facilities were fully Compliant at the time such operation commenced.