

Draft

CARRIAGE AGREEMENT

THIS CARRIAGE AGREEMENT is entered into on [] between,

1. _____, **s.r.o.** whose office is at _____, _____, BIN: _____, statutory body: _____, Executive Director, company entered in the Commercial register of District Court of _____, Section: Sro, insert No.: / (the "Operator"),

and

2. **MEGA MAX MEDIA, s.r.o.** whose office is at Zámocká 3, 811 01 Bratislava, BIN: 35 938 684, statutory body: Zsuzsanna Bérczi, Executive Director, company entered in the Commercial register of District Court of Bratislava I, Section: Sro, insert No.: 36300/B (the "Programmer"),

together the "parties" and separately each a "party".

RECITALS:

Whereas:

- A. Programmer is the compiler and owner of the Service;
- B. Operator is the owner of [Cable/DTH/IPTV] Systems and wishes to distribute the Service in the Territory;
- C. Programmer agrees to deliver the Service in digital format for transmission by the Operator to Subscribers in the Territory in accordance with the following terms and conditions agreed between the parties.

The parties agree as follows:

1. Definitions and Interpretation

1.1 In this Agreement including the Recitals and Schedules the following words and expressions shall have the following meanings unless the context otherwise requires:

(a) "Systems" means the [Cable, DTH, IPTV] networks (whether fibre, wire or co-axial cable or a combination thereof) owned and/or operated by Operator within the Territory for the transmission of services including television, data, radio, telecommunication, interactive and internet services.

(b) "Channel" means the scheduled transmission of programmes which make up the Service.

(c) "Commercial Subscribers" means any Subscriber who is not a Residential Subscriber or a Hotel and includes any place which is a commercial premises and/or communal meeting place including public houses, bars, inns, clubs, shops, shopping malls, offices, public areas, lobbies and common areas of buildings (whether or not any such areas are open to the general public or are restricted only to members of a club, society or other restricted group) in the Territory which is authorised by or on behalf of the Operator to receive the Basic Tier.

(d) "Decoding Equipment" means such equipment to be provided by Operator at Operator's cost as necessary to de-scramble the Service's CryptoWorks

encryption in order provide a non-encrypted DVB transport. Programmer will provide Operator with necessary smart cards.

(e) "Basic Tier" means the tier of programming provided by Operator which shall include the Service and to which all Subscribers must subscribe in order to receive one or more of the programming services offered via the Systems.

(f) "Fees" shall mean the fees specified in clause 5.1 and Schedule 1.

(g) "Hotel" means a hotel, motel, guesthouse or boarding house in the Territory that is authorised by or on behalf of the Operator to receive the Basic Tier.

(h) "Records" shall mean the records specified in clause 5.5.

(i) "Residential Subscriber" means any person who owns, occupies or leases a residential dwelling unit in the Territory and is authorised by or on behalf of the Operator to receive the Basic Tier in the Territory.

(j) "Satellite" shall mean the ASTRA 1Kr satellite transponder 1063 at coordinates 19.2° East or such other satellite as Programmer shall designate pursuant to Clause 4.3 below.

(k) "Service" means the Programmer's channel currently known as "bebe tv" which consists of animated programmes targeted to infants and pre-school children transmitted 14 hours a day via the Satellite. The Programmer may change the number of programming hours, withdraw, change the content of or add programmes to the Service from time to time.

(l) "Subscriber" means Residential Subscribers, Hotels and Commercial Subscribers.

(m) "Term" shall bear the meaning ascribed in clause 3.1 and 3.2

(n) "Territory" means _____ Romania

(o) "VAT" means Value Added Tax or any similar sales tax imposed by the government of the Territory.

1.2 In this Agreement unless otherwise specified:

- a. a person means any person, individual, company, firm, corporation, government, state or agency (whether or not having separate legal personality and irrespective of the jurisdiction in or under the law of which it is incorporated or exists);
- b. references to recitals, clauses or schedules are to the recitals and clauses of and schedules to this Agreement;
- c. the recitals and schedules form an operative part of this Agreement and references to this Agreement shall, unless the context otherwise requires, include references to the recitals and schedules;
- d. words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders; and
- e. headings are for information only and shall not be taken into account when construing the meaning of this Agreement.

2. Carriage Rights

- 2.1 Programmer hereby grants to Operator subject to the terms of this Agreement the non-exclusive right to distribute the Service in the Basic Tier on the Systems in the Territory to Subscribers during the Term.
- 2.2 Operator agrees to launch the Service in the Basic Tier to Residential Subscribers on the Cable Systems not later than _____
- 2.3 Operator will use all reasonable commercial efforts to maximize the number of Subscribers.
- 2.4 The rights granted under clause 2.1 include the right to digitize, compress (provided that any compression shall not have a detrimental effect on signal quality which is discernable to Subscribers), encode, decode, encrypt, de-encrypt and multiplex the Service.

3. Term

- 3.1 This Agreement is concluded for a definite period of time from _____ to _____ (5 years).
- 3.2 After the expiry of the term agreed in par. 3.1 hereof the Agreement shall be automatically renewed for successive, 1 year period unless either party notifies the other party by a registered letter that it is no longer interested in further renewal of the term. The registered letter with the content specified in the preceding sentence must be delivered to the other party (hereinafter as the "recipient") at least three months before the expiry of the term agreed in par. 3.1 hereof or three months before the expiry of the period by which the term was extended in accordance with this provision. The letter shall be deemed delivered on the day of take over of the same by the recipient or the day of the recipient's refusal to take over the notice. If the recipient does not take delivery of the notice and does not collect it within the collection period determined by the post office, the notice shall be deemed delivered on the last day of such period, irrespective of whether the recipient knew of its deposit or not.
- 3.3 If the written notice specified in par. 3.2 hereof is delivered to the recipient in the period shorter than three months before the expiry of the term, the Agreement shall terminate by expiry of the following term.

4. Delivery of Service

- 4.1 Programmer shall digitally broadcast the Service in an encrypted format via the Satellite for reception by the Operator.
- 4.2 Programmer shall ensure that its broadcast signal of the Service from the Satellite is securely encrypted and shall take all other action reasonably necessary to prevent unauthorised access to the Service by any third party provided that Programmer shall be entitled to broadcast in the clear for short periods of time to promote its direct to home service without being in breach of any of the provisions of this Agreement.
- 4.3 Programmer may elect to change the Satellite and/or the transponder thereon or the method of encryption via which the Service is delivered to Operator by giving not less than 30 days prior written notice of such change to Operator (including full details of the new Satellite transponder or encryption method and the date when such change is to take effect).
- 4.4 The Programmer undertakes the obligation to ensure the reception quality of the channel, access to the channel, or continuous delivery or availability of the channel. In the event of interruptions to the channel signal in an aggregate amount of more than 2 hours in any one calendar month (other than due to an event of force majeure as referred to in Clause 8.4) the Operator is entitled to a proportionate reduction of the License Fee based on the

duration in which the channel could not be transmitted by the Operator to Subscribers as a result of such interruption.

5. Fees and payment

- 5.1 Operator shall pay Programmer during the Term the Fees each month as provided for in Schedule 1.
- 5.2 The number of Subscribers in any one month shall be calculated by adding together the number of Subscribers on the first day of such month and the number of Subscribers on the first day of the following month and dividing the total by two, provided that the number of Residential Subscribers, Commercial Subscribers and Hotels shall be calculated and reported separately.
- 5.3 Within ten (10) days of the end of each calendar month during the Term, Operator shall notify Programmer in writing of the number of Subscribers (detailing separately Residential Subscribers, Commercial Subscribers and Hotels) to the Service in the Territory for that month. Fees due for each calendar month shall be invoiced by Programmer and paid by Operator within 30 days of receipt of the Programmer's invoice.
- 5.4 During the Term and for a six month period thereafter Operator shall maintain full and complete Records pertaining separately to the number of Residential Subscribers Commercial Subscribers and Hotels for each calendar month of the Term and the calculation of Fees payable in respect of the Service throughout the Term.
- 5.5 The Programmer may, on two occasions in any consecutive period of 12 (twelve) months during the term of this Agreement and 6 (six) months thereafter, have an Audit performed by its agents on not less than 14 (fourteen) days prior notice to the Operator and at its own expense inspect and make copies of all such relevant records and contracts during normal business hours. The Operator is obliged to give the necessary assistance for such an audit, including the checking of the Subscriber lists in the field. For the purposes of this clause the Programmer agrees that it shall only use an auditor from one of the top four internationally recognized firms of accountants present in Romania to carry out such inspections: KMPG, Price Waterhouse Coopers, Deloitte & Touche, Ernst & Young.
- 5.5.1 In case of an audit initiated by the Programmer, the Operator has the right to be represented by at least 1 (one) of its representative who may assist with the Audit and will countersign for the correctness of the results.
- 5.5.2 If the results of such audit reveal that the Operator has underreported the number of subscribers by 5% or more, in any period, than the Operator shall pay to Programmer the amount owed for such period.
- 5.5.3 If any audit undertaken by the Programmer reveals the fact that the Operator has underreported the number of subscribers by more than 5%, and the results of the audit are confirmed by the Operator, Operator will reimburse the Programmer for all outstanding amounts together with the penalties for late payment within 10 days from the receipt of the invoice sent by the Programmer.
- 5.5.4 If any inspection or audit reveals an underreporting and underpayment of more than 5% and the Operator does not confirm these results, than the Programmer can submit a claim to the relevant competent judicial authority in order that the Operator should be obliged to reimburse the underpaid amount, based on a judicial audit ordered by the Court. If the Court confirms the initial result of the audit the Operator shall pay all the due amounts together with the penalties and the costs of the initial audit within 10 days from receiving the invoice from the Programmer. In this case Programmer has the right to terminate forthwith this Agreement without any notice and the Operator shall pay immediately all the due amounts and any other debts he owes in relation with this Agreement.

- 5.6 Any amount due by Operator to Programmer pursuant to this Agreement which is paid late shall bear interest at 0,01% per day until the payment is fulfilled.
- 5.7 Notwithstanding clause 5.3 above if Operator does not provide the requisite information concerning Residential Subscribers, Commercial Subscribers and Hotels to Programmer within the said ten (10) day period Programmer shall be entitled to invoice Operator in respect of the relevant calendar month based on the numbers of Subscribers for the last calendar month for which Programmer has received the Subscriber numbers and Operator will pay such invoice in accordance with clause 5.3. When Programmer receives the correct Subscriber numbers Programmer will send a further invoice for any additional Fees and Operator shall pay such further invoice within thirty (30) days together with interest on such sum calculated in accordance with clause 5.6 above for the period from the date Programmer would have been paid had Operator complied fully with the provisions of clause 5.3 above and the date of actual payment. Should Operator fail for two consecutive months to provide such subscriber data as required in clause 5.3 above, Programmer may use its best estimate to increase such monthly invoice to reflect projected subscribers. Once a report is received by Operator, any overpayment will be credited and any underpayment will be charged using the late fee calculation provided in clause 5.6 above.
- 5.8 Programmer shall add any applicable VAT to any invoice for Fees and such VAT shall be payable by Operator in addition to Fees.
- 5.9. If, having used its best efforts to avoid so doing, the Operator is required by law in the Territory to withhold tax that is payable in respect of the License Fee, the Operator will pay such withheld sum to the relevant authorities and promptly, within 90 (ninety) days from the payment date but in any event within 60 (sixty) days from the end of the calendar year, supply the Programmer with evidence, including all relevant paperwork delivered to or by the relevant Romanian authorities, of such payment .
- 5.9.1 The Programmer undertakes the obligation to provide the Operator within 30 (thirty) days from the signing date of this Agreement with a certificate of fiscal residence in order that the relevant Romanian fiscal authorities should establish the level of tax that should be withheld in Romania. In the event that the Programmer does not provide such a certificate, the Operator is not responsible for the level of tax established by the Romanian authorities to be withheld in Romania.
- 5.9.2 If there shall be currency restrictions in force in the Territory which prevent the remittance to the Programmer of the License Fee or, any part thereof, the Operator shall notify the Licensor and at the written request of the Programmer any part of the License Fee not remitted by reason of such restrictions shall be held in a bank account in the Territory in the Licensor's name. The Operator shall at all times assist the Programmer, as the Programmer may reasonably require, in connection with the remittance to Slovakia of moneys in such account.
6. **Marketing**
- 6.1 Operator will use reasonable efforts to market the Service and the Basic Tier.
- 6.2 Programmer hereby grants Operator a non-exclusive license to use the trade marks, logos, service marks and theme music for the Service for the purposes of exercising the rights granted under this Agreement and marketing and promoting the Service. Operator acknowledges that the license of rights granted under this clause does not confer any rights of ownership in the same to Operator and that such rights together with all goodwill associated with them are and will remain the exclusive property of Programmer and Operator shall promptly cease all use of all of the Programmer's trademarks upon the expiry or earlier termination (howsoever caused) of this Agreement.
- 6.3 Operator agrees that it shall identify the Service utilizing the brand name and logo designated by Programmer (currently "bebe tv") and not by any other name or identification. In the event Programmer changes the brand name and/or logo of the Service

during the Term, Operator shall co-operate with Programmer in changing its identification of the brand name and/or logo of the Service.

7. Warranties and Indemnities

7.1 Operator represents, warrants and undertakes to Programmer that:

- a. it has the right to enter into and perform this Agreement;
- b. it shall be responsible for pick up of the Service signal in the Territory and re-transmission of the Service to Subscribers;
- c. the Service shall be distributed in its entirety and without interruptions, alterations, additions, deletions or editing of any portion thereof, except as required by law or regulation in the Territory;
- d. it shall be responsible for obtaining all required governmental and/or regulatory licenses and permissions, if any, relating to the lawful distribution of the Service in the Territory and shall comply with all relevant requirements of law regulation and code in the Territory in respect of the transmission of the Service to Subscribers. Without prejudice to the generality of the foregoing, Operator will be responsible for obtaining and maintaining throughout the Term all necessary music rights licenses from any collection society and will be responsible for all music rights payments due thereto or otherwise payable in respect of the Service during the Term; and
- e. it shall not and shall not authorise others to record, copy, use, exploit or duplicate the Service or any part thereof, unless required to do so by law or regulation and Operator shall use its reasonable endeavors to prevent piracy or unauthorised use of copyright material from the Service.

7.2 Programmer represents, warrants and undertakes to Operator that:

- a. it has the right to enter into and perform this Agreement; and
- b. save as provided in clause 7.1(d) it is the owner of, or controls, or is otherwise licensed to exploit, or will within a reasonable time acquire ownership, control or licenses to all copyright and other rights in the Service and that all rights, licenses and consents necessary for the broadcast of the Service from the Satellite have been obtained or will be obtained within a reasonable time.

7.3 Programmer shall indemnify and hold Operator harmless from and against any and all losses, liabilities, claims, damages, cost and expenses (including without limitation reasonable attorney's fees and expenses) arising out of a breach of any obligation or warranty given hereunder by Programmer.

7.4 Operator shall indemnify and hold Programmer harmless from and against any and all losses, liabilities, claims, damages, costs and expenses (including without limitation reasonable attorney's fees and expenses) arising out of a breach of any obligation or warranty given hereunder by Operator.

8 Termination

8.1 Notwithstanding any other provisions of this Agreement, this Agreement may be terminated by either party (the "Terminating Party") immediately upon receipt of notice, in the event that the other party has breached a material term or condition of this Agreement and the other party has not cured such breach (if capable of cure) within thirty (30) days after receipt of a written notice from the Terminating Party specifying such breach.

- 8.2 If either party makes an assignment for the benefit of its creditors, or commences bankruptcy, receivership, insolvency, reorganization, dissolution or liquidation proceedings, (other than for the purpose of a solvent internal reorganization or restructuring) the other party shall be entitled to terminate this Agreement, and shall be entitled to exercise any and all remedies provided at law or in equity or otherwise provided in this Agreement.
- 8.3 Notwithstanding the foregoing provisions, Programmer may terminate this Agreement immediately upon written notice at any time after launch if the Service is not by that date distributed by the Operator to all Subscribers in fully encrypted format.
- 8.4 If the performance by either party of its obligations hereunder is prevented, hindered or delayed by an event which is beyond the control of the party concerned, including without limitation: war, fire, earthquake, strike, act of government or other regulatory authority, executive or judicial order or decree, that party shall immediately notify the other party in writing of such event and shall be excused from performing its affected obligations hereunder. If such event continues for a period of not less than 60 (sixty) consecutive days than at any time thereafter for so long as such event continues either party may terminate this Agreement by giving not less than one month's notice to the other .

9. Notices

- 9.1 All notices under this Agreement shall be given in writing and be deemed received, unless otherwise stipulated herein:
- if sent via courier on the date of delivery; or
 - if personally delivered, on the date of delivery; or
 - if sent via registered mail, return receipt requested, on the date of delivery of the letter; or
 - if sent by facsimile, on the date of receipt provided that a valid facsimile success report has been obtained
- 9.2 The address of the parties for delivery of notices is set forth below. Either party may change such address by notice to the other party.

For the Programmer:

MEGA MAX MEDIA, s.r.o.
Zámocká 3
811 01 Bratislava
Slovakia

For the Operator:

10. Assignability

Operator shall not sub-license or assign the benefit of this Agreement without the prior written consent of Programmer (such consent not to be unreasonably withheld or delayed).

11. Confidentiality

- 11.1 Programmer and Operator each agrees that it shall keep confidential the terms, conditions and provisions of this Agreement and it shall cause its respective employees, advisers or

consultants to adhere to this obligation. Any information relating to the affairs or business of Programmer or Operator which comes into the possession of the other party shall be kept confidential by that other party unless and until the same has fallen into the public domain otherwise than directly or indirectly through that other party's default, or is required to be disclosed by a court of law.

11.2 In addition, neither party will issue any press releases or make any other disclosures relating to the transaction contemplated by this Agreement or the fact that the parties entered into this Agreement without the prior consent of the other party hereto, or without consulting the other party about the content and timing of such release or announcement. Each party shall cause its respective employees, advisers or consultants to adhere to the above obligation.

12. **Miscellaneous**

12.1 A waiver by either party of any breach or default by the other party will not be construed as a continuing waiver of the same or of any other breach or default under this Agreement. No such waiver shall be effective unless in writing signed by the party charged therewith.

12.2 Nothing in this Agreement shall be deemed to create any joint venture, partnership or principal agent relation between the parties hereto, and no party shall hold itself out in advertising or otherwise in any manner which would indicate or imply any such relationship with the other.

12.3 This Agreement contains the entire agreement between the parties respecting the subject matter of this Agreement and supersedes all prior understandings and arrangements respecting the subject matter of this Agreement.

12.4 This Agreement shall be executed in both English and Romanian language versions. The parties hereto agree that in the event of any dispute the Romanian language version shall prevail.

13. **Governing Law**

This Agreement shall be construed and performed in all respects in accordance with Romanian law. Any dispute or claim arising out of or relating to this Agreement shall be subject to the jurisdiction of the Romanian courts.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed.

MEGA MAX MEDIA, s.r.o.

Title: _____
Name: _____
Date: _____

Title: Executive Director
Name: Zsuzsanna Bérczi
Date: _____

Schedule 1
Fees

1. Residential Subscribers- guaranteed number of subscribers: 500

Fee for the Service per Residential Subscriber per Month:

2. Commercial Subscribers & Hotels

Prior to the Operator exercising its right to distribute to Commercial Subscribers or Hotels, the parties shall enter into good faith negotiations regarding the Fees which shall apply to such distribution, which, once agreed, shall be deemed to be incorporated into this schedule.

SAMPLE

SCHEDULE 2

Technical Data

The Service is uplinked to the satellite for digital or analogue re-transmission. Presently these services are available from the Astra 1Kr satellite Transponder 1063, which provides total pan-European coverage.

Audio	MPEG 1 Layer 2
Compression Ratio	Min. 128 kbps
Present Satellite	Astra 1Kr (19.2° East)
Present Transponder	1063
Broadcast Frequency	10920 MHz
Encryption	Philips CryptoWorks/Nagra
Receiver*	Digital Video Broadcast (DVB)
Dish	60 cm minimum
Low Noise Blocker	Universal
Polarisation	Horizontal
Symbol Rate	22.000
Depuncturing	Rate $\frac{3}{4}$
Fec	5/6
NID	1
Service ID	20350
Video PID	551
Audio SVK	564

SAMPLE