

[EXHIBIT D-3]

KUDELSKI SMART CARD PURCHASE AGREEMENT

This Kudelski Smart Card Purchase Agreement ("Agreement"), is made and entered into as of this twenty-third day of June 1998, by and between Kudelski SA, a corporation organized under the laws of Switzerland (hereinafter referred to as "Kudelski"), and NagraStar LLC, a Colorado limited liability company (hereinafter referred to as "NagraStar").

INTRODUCTION

- A. In conjunction with this Agreement, the parties are entering into a Software License Agreement, a Service and Development Agreement, and an Escrow Agreement (collectively, the "Related Contracts"), pursuant to which Kudelski is licensing a conditional access system to NagraStar.
- B. The parties desire to provide for the sale to NagraStar by Kudelski of "Smart Cards" for resale to EchoStar Communications Corporation and those entities it directly or indirectly controls, is controlled by, or is under common control with (collectively, "EchoStar"), and the licensing of all related technology and software, excluding source code to the Smart Card encryption technology, to NagraStar pursuant to the terms of this Agreement for the purpose of reselling and sublicensing such Smart Cards, technology and software to EchoStar, for resale and sublicense exclusively for use with the satellite operations of EchoStar, ExpressVu, Inc., and such other direct broadcast satellite entities ("DBS Providers") as may be authorized by Kudelski and EchoStar in writing (collectively, "Authorized Resale").
- C. EchoStar currently purchases Smart Cards from Kudelski. Pursuant to this Agreement and other related Agreements, EchoStar will purchase Smart Cards directly from NagraStar.

AGREEMENT

1. DESIGN, USE, AND OPERATION OF SMART CARDS.

1.1 Use by Consumer. The "Smart Card" resembles a credit card in size and appearance, is embedded with a microchip, and provides security for digital broadcast satellite ("DBS") systems. The Smart Card is used with a unique DBS receiver, determined by the serial number of the DBS receiver, and must be inserted into, and remain in, the DBS receiver in order for it to properly receive DBS programming.

1.2 Technical Functions. The Smart Card has the following functions:

- A. Controls the descrambling process(es) in real-time by returning a control word when receiving entitlement control messages; control words are returned only if the smart card holds the corresponding access rights.

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[D-3] 1

CASE NO.
SA CV 03-950 DOC (JTLx)
ECHOSTAR SATELLITE CORP., et al.,

vs.

NDS GROUP PLC, et al.

DEFENDANT'S EXHIBIT 691

DATE _____ IDEN.

DATE _____ EVID.

BY _____
Deputy Clerk

HIGHLY CONFIDENTIAL

Case No. SA CV03-950 DOC (JTL)

[EXHIBIT D-3]

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1.2 Technical Functions. The Smart Card has the following functions:

A. Controls the descrambling process(es) in real-time by returning a control word when receiving entitlement control messages; control words are returned only if the smart card holds the corresponding access rights.

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[D-3] 1

Exhibit No.:	691
Deponent:	O'Brien
Date/APP:	8/24/07
Hunter + Geist, Inc.	lm

HIGHLY CONFIDENTIAL

Case No. SA CV03-950 DOC (JTL)

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B. Holds the access rights for both subscription and pay-per-view events, as updated by entitlement management messages.

C. Manages impulse pay-per-view events by giving access rights against debit of credit held in the Smart Card.

D. Provides information for communication on pay-per-view matters with the call collector.

E. Manages the security against piracy by keeping cryptological keys up to date.

F. Enables new functions in the future via Smart Card software downloading.

G. Manages blackout and 'spot beam' restrictions.

H. All other Smart Card functions obtained from Kudelski and used by, or available to, EchoStar as of the date of this Agreement.

1.3 Longevity. Smart Cards are designed for permanent, continuous operation for at least four years. For normal operation, periodic Smart Card replacement is not necessary during this period.

2. SMART CARD SOFTWARE.

2.1 Defined. Certain interface software has been designed for use with the Smart Cards (the "Software"). The term "Software" shall include: (i) all technology obtained from Kudelski by EchoStar which is intended for use, or actually used by NagraStar as of the date of this Agreement, in connection with the Smart Cards; (ii) the Entitlement Message Encrytor (EME), defined as those systems, services and equipment licensed to NagraStar by Kudelski as of the date of this Agreement which are responsible for the encryption of Entitlement Management Messages (EMMs), and related functions; (iii) the Entitlement Control Encrytor (ECE), defined as those systems, services and equipment licensed to NagraStar by Kudelski as of the date of this Agreement which are responsible for the generation of DVB scrambling control words, the generation and encryption of the Entitlement Control Messages (ECMs) which contain them, and related functions; and (iv) the Smart Card personalization tool.

2.2 Function. The Software is designed to, inter alia, support the technical functions set forth in Section 1.2 above.

3. PURCHASE; PRICE

3.1 Smart Cards. NagraStar shall have the right, during the term of this Agreement, to purchase Smart Cards from Kudelski for resale to EchoStar, for use by EchoStar (including Authorized Resale). NagraStar shall be invoiced by Kudelski eight U.S. dollars (\$8) per Smart Card, CIF Denver International Airport, assuming that Kudelski is selecting the transporter. Smart Card

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[D-3] 2

personalization is included in the cost of the Smart Cards. NagraStar agrees to purchase all of its requirements of Smart Cards for use in the Kudelski conditional access system exclusively from Kudelski.

3.2 Software. An irrevocable license to use the Software is included in the cost of the Smart Cards.

3.3 Price Adjustment. At the end of each calendar year during the term hereof in which NagraStar purchases less than one million Smart Cards from Kudelski hereunder (prorated in any partial calendar year), NagraStar shall pay Kudelski an amount equal to the product of (a) ten cents (\$.10) and (b) the difference between (i) one million and (ii) the number of Smart Cards purchased by NagraStar from Kudelski hereunder in such calendar year. In any calendar year during the term hereof in which NagraStar purchases more than one million Smart Cards from Kudelski hereunder (prorated in any partial calendar year), Kudelski shall pay NagraStar an amount equal to the product of (a) ten cents (\$.10) and (b) the difference between (i) the number of Smart Cards purchased by NagraStar from Kudelski hereunder in such calendar year, and (ii) one million; provided, however, that Kudelski shall have no obligation to pay NagraStar more than NagraStar has paid Kudelski in the aggregate under the first sentence of this Section 3.3, and any amount which Kudelski is not obligated to pay shall be carried forward as a credit to NagraStar in any future calendar year in which it is required to make a payment to Kudelski under the first sentence of this Section 3.3.

4. PRICE GUARANTEE; LIMITATION; AVAILABILITY

4.1 Guarantee. The price for Smart Cards under this Agreement shall not increase prior to February 2, 2010, unless the price of the microchip used in the Smart Card increases materially or other exceptional changes beyond the control of Kudelski take place in other Smart Card manufacturing cost components.

4.2 Price Limitation. Notwithstanding the Smart Card price in Section 3.1 or in Section 7.2, Kudelski will, throughout the term of this Agreement, provide Smart Cards to NagraStar at a price which does not exceed sixty-seven U.S. cents (\$0.67) less than the lowest price at which Kudelski provides comparable cards to any other person or entity in quantities no more than double the number of Smart Cards purchased annually by NagraStar. The provisions of this Section 4.2 shall not apply to Smart Cards sold by Kudelski as replacements for security breaches pursuant to Section 5.3.

4.3 Availability. Kudelski agrees to deliver Smart Cards within twenty (20) weeks of receipt of a committed purchase order from NagraStar. Kudelski shall promptly send a copy to NagraStar of any purchase order or similar contract Kudelski delivers to third parties regarding the manufacture for Kudelski of Smart Cards, or of any components thereof, which Kudelski intends to deliver to NagraStar in fulfillment of a committed purchase order.

5. WARRANTY

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[D-3] 3

5.1 Smart Cards. Kudelski warrants that each Smart Card will function as intended for at least three months from the date of delivery to the end user, if the Smart Card has not suffered from mechanical stress higher than indicated in the ISO 7816/1 standard.

5.2 Limitation. The warranty on Smart Cards shall not be valid longer than twelve months from the date of delivery by Kudelski to NagraStar.

5.3 Additional Warranty. Kudelski further warrants the security of the Kudelski conditional access system provided by Kudelski, and expressly agrees that if the security of the conditional access system is breached, and replacement of Smart Cards is reasonably necessary to cure the breach, notwithstanding the Smart Card pricing specified in Sections 3.1 and 7.2, Kudelski will, at the highest priority within aggressive manufacturing lead times, replace all outstanding Smart Cards which were delivered by Kudelski no more than 48 months prior to the date of such notice, and which are in use by end-users of the conditional access system or are in NagraStar's inventories, at a cost to NagraStar equal to the direct marginal cost of manufacturing the Smart Cards (i.e., exclusive of all overhead costs).

6. INDEMNIFICATION

6.1 By Kudelski. Kudelski shall indemnify, defend and hold NagraStar and its officers, directors, employees, agents and shareholders, and its and their respective assigns, successors and legal representatives harmless from and against, any and all costs, losses, liabilities, damages, lawsuits, judgments, claims, actions, penalties, fines and expenses (including, without limitation, interest, penalties, reasonable attorneys' fees and all monies paid in the investigation, defense or settlement of any or all of the foregoing, "Claims") that arise out of, or are incurred in connection with: (a) Kudelski's performance or failure of performance under this Agreement and any direct or indirect results thereof; (b) Kudelski's acts or omissions, lawful or unlawful; (c) the breach of any of Kudelski's representations or warranties herein; or (d) the failure of Kudelski to comply with, or any actual or alleged violation of, any applicable laws, statute, ordinance, governmental administrative order, rule or regulation.

6.2 By NagraStar. NagraStar shall indemnify, defend and hold Kudelski and its officers, directors, employees, agents and shareholders, and its and their respective assigns, heirs, successors and legal representatives harmless from and against, any and all Claims that arise out of, or are incurred in connection with: (a) NagraStar's performance or failure of performance under this Agreement and any direct or indirect results thereof; (b) NagraStar's acts or omissions, lawful or unlawful; (c) the breach of any of NagraStar's representations or warranties herein; or (d) the failure of NagraStar to comply with, or any actual or alleged violation of, any applicable laws, statute, ordinance, governmental administrative order, rule or regulation.

7. TERM

7.1 Term. This Agreement and all terms contained herein shall commence on July 1, 1998, and shall remain in full force and effect in perpetuity, unless earlier terminated as provided in Section 7.3.

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[D-3] 4

7.2 Dissolution of NagraStar for Business Convenience. If NagraStar is dissolved by Kudelski for business convenience pursuant to Section 10.1(c) of the NagraStar Operating Agreement, EchoStar shall automatically assume all of the duties, obligations, and benefits of NagraStar under this Agreement, including but not limited to the right to indemnification pursuant to Article 6, except that the unit cost to EchoStar for the purchase of Smart Cards from Kudelski in Section 3.1 shall be \$8.59 (subject to the price limitations of Section 4.2).

7.3 Early Termination. If, pursuant to Section 10.2(b) of the NagraStar Operating Agreement, EchoStar ceases to use the conditional access system that it obtained from Kudelski, as updated and modified, then Kudelski shall have the right to terminate this Agreement upon thirty days notice to NagraStar. Kudelski shall also have the right to terminate this Agreement if it first dissolves NagraStar pursuant to Section 10.1(d) of the NagraStar Operating Agreement.

8. CONFIDENTIALITY

The parties agree that this Agreement is confidential and neither party shall disclose any of the commercial, business, technical, operational, or legal details of this Agreement (the "Confidential Information") in any manner, including but not limited to press releases or other publicity of any nature without the prior written approval of the other party. The obligations imposed upon the parties herein shall survive termination of this Agreement indefinitely, but shall not apply to Confidential Information which is:

- (a) or becomes generally available to the public through no wrongful act of the party receiving the Confidential Information (the "Receiving Party");
- (b) already lawfully in the possession of the Receiving Party and not subject to an existing agreement of confidentiality between the parties;
- (c) received from a third party without restriction and without breach of this Agreement;
- (d) independently developed by the Receiving Party; or
- (e) released pursuant to the requirements imposed on the party by U.S. or Swiss securities laws, or the binding order of a government agency or court, so long as prior to any such release the releasing party provides the other party with the greatest notice permitted under the circumstances, so that the party disclosing the Confidential Information may seek a protective order or other appropriate remedy. In any such event, the releasing party will disclose only such Confidential Information as is legally required and will exercise reasonable efforts to obtain confidential treatment for any Confidential Information being disclosed.

9. GOVERNING LAW; ARBITRATION

This Agreement, and the performances of the parties hereunder, shall be governed by the laws of the State of New York without giving effect to the principles of conflicts of laws that would

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[D-3] 5

otherwise provide for the application of the substantive law of another jurisdiction. Should any dispute among the parties arise, the parties agree that the sole jurisdiction and venue for the resolution of any such dispute shall be English language binding arbitration conducted in the New York City metropolitan area, in accordance with the Commercial Rules of the American Arbitration Association, which rules shall include the right to seek appropriate injunctive relief in such arbitration and are deemed to be incorporated by reference into this clause. Unless the arbitrators determine otherwise, the losing party in any arbitration shall pay the costs of the prevailing party.

10. NOTICES

The parties choose the following addresses as the addresses at which they will accept service of all documents and notices relating to this Agreement:

As to Kudelski: Kudelski SA
1033 Cheseaux
SWITZERLAND
Attn: Nicolas Goetschmann
Fax: 41 21/732 0300

As to NagraStar: NagraStar LLC
90 Inverness Circle East
Englewood, CO 80112
USA
Attn: Joe Ferguson and Xavier Carrel
Fax: (303) 706-5719

With a copy to: Kudelski SA
1033 Cheseaux
SWITZERLAND
Attn: Nicolas Goetschmann
Fax: 41 21/732 0300

And a copy to: EchoStar Communications Corporation
5701 S. Santa Fe Drive
Littleton, CO 80120
USA
Attn: David Moskowitz
Fax: (303) 723-1699

Any notice to be given by a party to the other parties pursuant to this Agreement shall be given in writing in the English language by prepaid registered post, by facsimile or shall be delivered by hand (delivery by hand must be acknowledged by written receipt from a duly authorized person at the office of the addressee), provided that:

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[D-3] 6

(a) any notice given by prepaid registered post shall be deemed to have been received by the addressee, in the absence of proof to the contrary, 14 days after the date of postage;

(b) any notice delivered by hand during normal business hours shall be deemed to have been received by the addressee, in the absence of proof to the contrary, at the time of delivery; and

(c) any notice given by facsimile shall be deemed to have been received by the addressee, in the absence of proof to the contrary, immediately upon the issuance by the transmitting facsimile machine, of a report confirming correct transmission of all the pages of the document containing the notice or upon receipt by the transmitting facsimile machine, at the end of the notice being transmitted, of the automatic answer-back of the receiving facsimile machine.

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

KUDELSKI S.A.

By: 

NAGRASTAR LLC

By: 