

5.2.2 MHP Test Consortium HAVi Test Suite License and Non-Disclosure Agreement

BETWEEN:

- (1) **European Telecommunications Standards Institute**, a standards-making organisation recognised by the European Union with its headquarters at 650 Route des Lucioles, 06921 Sophia Antipolis, France (the “Custodian”) and as agreed to by **Panasonic European Laboratories GmbH** acting on behalf of the **MHP Test Consortium** (the “Licensor”); and
- (2) The Company whose name appears on the signature page hereof (the “Licensee”).

WHEREAS:

- A.** The Custodian has entered into a DVB Conformance Testing Custodian Agreement (the “Custodian Agreement”) with (i) the DVB Project, a not for profit organisation with legal personality governed by Swiss law; and (ii) one or more rights holders; the Licensor has given to the Custodian a letter of instruction relating to this Agreement and consistent with the Custodian Agreement;
- B.** By a decision of its Steering Board the DVB Project has adopted a specification for the Multimedia Home Platform (the “DVB MHP Specification”, as further defined below), and its Steering Board has issued a “Declaration” in relation to certain DVB MHP Rules, the arrangements for a custodian and an experts group, testing and certain other matters;
- C.** The Custodian has been appointed by the DVB Project to undertake a variety of activities related to the administration of the Conformance Testing Requirements (as defined below) as specified and approved by an experts group named by the DVB Project; and
- D.** The MHP Test Consortium is the owner of, or the members collectively have license rights to, certain Test Suites and related materials (as defined below). The MHP Test Consortium currently consists of Licensor, Philips Consumer Electronics B.V., Sony United Kingdom Limited, Nokia Corporation, Canal+ Technologies, Institut fur Rundfunktechnik GmbH, Alticast Corporation and Convergence GmbH.
- E.** The Licensor acting through its agent the Custodian, is willing (and authorised by the MHP Test Consortium) to license the Test Suites to the Licensee for the limited purpose of testing and self-certifying of Implementations (as defined below) of the DVB MHP Specification.

NOW THEREFORE IT IS HEREBY AGREED AS FOLLOWS:

1. DEFINITIONS

In this Agreement, unless inconsistent with the context or otherwise specified, the following definitions shall apply.

“Affiliate”	means any subsidiary or parent company of the Licensee, as well as any entity that owns or controls the Licensee or that is owned or controlled by the Licensee.
“Agreement”	means the provisions of this MHP Test Consortium test suite license and non-disclosure agreement.
“Conformance Testing Requirements”	means the test programs, rules, guides, documentation and other materials determined by the DVB Project to be used for establishing whether an implementation of the DVB MHP Specification may be certified as an Implementation.

“DVB MHP Specification”	(or otherwise referred to as the “Specification”) means the DVB Multimedia Home Platform specification as adopted by the Steering Board of the DVB Project on the date of its first adoption under specification number MHP 1.0, and as such Specification may be amended from time to time by the DVB Project.
“DVB MHP Implementer”	means a legal entity that has (i) produced and Implementation; (ii) entered into an MHP Test Consortium Test Suite License and Non-Disclosure Agreement identical (except for the identity of the Licensee) to this Agreement; (iii) completed and satisfied the Conformance Testing Requirements delivered to the Implementer by the Custodian and (iv) has provided to the Custodian the Certificate of Completion of the Conformance Testing attached as Annex A to the Custodian Agreement.
“Effective Date”	means the date of signature of this Agreement.
“Implementation”	means an implementation of the Specification that (i) fully implements the appropriate profile of the Specification with the possible exception of options, (ii) implements all required interfaces and functionality of the Specification; and (iii) fully satisfies the Conformance Testing Requirements, including, but not limited to, any self-certification requirement.
“Incomplete Implementation”	means an implementation of the Specification that implements less than all the required interfaces and functionality of the Specification and/or that does not fully satisfy the Conformance Testing Requirements.
“Term”	means the term of this Agreement as specified in Clause 7.
“Test Suites”	means the test suites licensed hereunder, as may be revised by the Licensor during the Term, that are licensed by the Licensor to the Custodian, and included by the Custodian as part of the Conformance Testing Requirements.

2. LICENSE GRANTS

- 2.1 Subject to the terms of this Agreement, the Licensor hereby grants, as of the Effective Date, to the Licensee, a limited, non-exclusive, non-transferable, world-wide, royalty-free license to use the Test Suites. This grant is solely for the purpose of testing and self-certifying Implementations in accordance with the Conformance Testing Requirements, which shall include the right to test Incomplete Implementations that are delivered to an Implementer for subsequent integration and distribution as part of an Implementation distributed by such Implementer. Licensee need not require such Implementer to integrate and distribute an Incomplete Implementation as part of an Implementation, but Licensee shall not authorise the Implementer to distribute Licensee's Incomplete Implementation unless it is integrated into and distributed as part of an Implementation.
- 2.2 Nothing in the foregoing shall be understood to grant a license for the Licensee to use the Test Suites in any other manner than as set out in Clause 2.1 or to sub-license the Test Suites.
- 2.3 The Licensor reserves every right to take legal action against the Licensee if the Licensee uses the Test Suites in breach of this Agreement or outside the scope of the licenses granted herein. Similarly, the Licensee reserves every right to take legal action to preserve its rights with respect to the use of the Test Suites.
- 2.4 For the avoidance of doubt the Licensee acknowledges and agrees that it is not licensed hereunder to:
- (a) distribute the Test Suites to any third party; or
 - (b) modify or create derivative works of the Test Suites, or, except as otherwise provided by law, disassemble or decompile binary portions of the Test Suites, or otherwise attempt to derive the source code from such portions; or
 - (c) use the Test Suites, or any portion thereof, to develop other test programs or test applications or suites intended to validate compatibility with the MHP Specification, or any portion thereof.
- 2.5 No license is granted hereunder with respect to Incomplete Implementations that are delivered to any third party other than an Implementer for subsequent integration and distribution as part of an Implementation distributed by such Implementer.

3. PROPRIETARY RIGHTS

- 3.1 Except to the extent that such rights are granted under this Agreement, the Licensee shall not acquire any title, copyright or other proprietary rights in the Test Suites or any copies thereof.
- 3.2 The Licensee undertakes and agrees not to remove, suppress or modify in any way any proprietary marking, including any trade mark or copyright notice, on or in the Test Suites if in source code form.
- 3.3 The Licensee shall notify the Custodian immediately if the Licensee becomes aware of any unauthorised access to, use or copying of the Test Suites by any person or any other breach or violation of the terms of this Agreement.
- 3.4 The Licensor retains all right title and interest in and to the Test Suites, including any upgrades to the Test Suites.
- 3.5 Neither the Custodian nor the Licensor shall incur any obligations by virtue of this Agreement to provide any support or administrative services concerning the Test Suites, including access to any subsequent releases of the Test Suites.
- 3.6 The Licensee may provide the Test Suites to a contractor for the limited purpose only of assisting the contractor in performing services for the Licensee to develop, test and self-certify Implementations in accordance with the Conformance Testing Requirements. This contractor must have executed an agreement with the Licensee that is consistent with the Licensee's rights and obligations under this Agreement. _ Licensee shall assume responsibility for any such contractor to the extent necessary in order protect the interests of Licensor in accordance with this Agreement.

- 3.7 The Licensee acknowledges that this Agreement does not grant any right or license under any intellectual property rights of the Licensor, or otherwise, except as expressly provided for in this Agreement, and no other right or license is to be implied or inferred from any provision of this Agreement or by the conduct of the parties. For example, no right, title or interest in or to any patents, trademarks, service marks or trade names of the Licensor or the Licensor's licensors is granted under this Agreement.

4. LIMITED WARRANTY

THE TEST SUITES ARE LICENSED "AS IS" AND ALL REPRESENTATIONS AND WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT ARE HEREBY DISCLAIMED.

5. CONFIDENTIALITY

- 5.1 The Licensee hereby acknowledges that the Test Suites, and in particular, but without the limitation, the source code, contain confidential information of the Licensor. The Licensee undertakes to keep confidential all information contained in or otherwise received from the Licensor in connection with the Test Suites (the "Confidential Information").
- 5.2 The Licensee hereby agrees that the Confidential Information shall be used solely for the purposes specified in Clause 2.1 above, and agrees to keep the Confidential Information strictly confidential at all times and shall not disclose it to any person except to an Affiliate and to its employees (who under the terms of their employment by the Licensee are subject to an obligation not to disclose confidential information of the Licensee), and who have a "need to know" for the purposes specified in Clause 2.1 and are made aware of the requirements of this Clause 5.
- 5.3 The Licensee shall protect the Confidential Information with the same degree of care as it normally uses in the protection of its own confidential and proprietary information, but in no case with any lesser degree than reasonable care. The Licensee shall, at the Custodian's reasonable request, provide written assurances concerning the steps taken by the Licensee and its Affiliates to preserve the confidentiality of the Confidential Information.
- 5.4 The Licensee acknowledges that the Custodian is obligated not to disclose the Licensee's identity to the Licensor except at the instruction of the Chairman of the DVB Steering Board or in the event that the Licensor provides the Custodian in good faith with reasonable grounds for believing that the Licensee may be in violation of its obligations hereunder.
- 5.5 The terms of this Clause 5 shall survive termination of this Agreement.

6. LIMITATION OF LIABILITY

IN NO EVENT SHALL THE LICENSOR OR THE CUSTODIAN BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE LOSSES OR DAMAGES OF ANY KIND WHATSOEVER AND HOWSOEVER CAUSED, WHETHER ARISING UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, INCLUDING (WITHOUT LIMITATION) LOSS OF PRODUCTION, LOSS OF OR CORRUPTION TO DATA, LOSS OF PROFITS OR OF CONTRACTS, LOSS OF OPERATION TIME AND LOSS OF GOODWILL OR ANTICIPATED SAVINGS. The parties acknowledge that they have relied upon the limitations set forth in this Clause in determining whether to enter into this Agreement.

7. TERM AND TERMINATION

- 7.1 The term of this Agreement shall begin on the Effective Date and shall continue unless and until the earlier of:
- (a) termination of this Agreement pursuant to this Clause 7; or
 - (b) the Test Suites cease to be included as part of the Conformance Testing Requirements.

Termination of this Agreement shall in no way relieve the Licensee from any of its obligations under this Agreement.

- 7.2 The License granted pursuant to Clause 2.1 of this Agreement can be terminated by the Licensor upon written notice given by the Custodian upon the occurrence of the following events:
- (a) the Licensee or any of its Affiliates breaches any of the terms hereof or uses the Test Suites outside of the scope of the license granted hereunder; or
 - (b) the Licensee shall convene any meeting of creditors or pass a resolution for winding up or suffer a petition for winding up; or
 - (c) the Licensee shall have an administrative receiver or receiver appointed over the whole or part of its assets or suffer the appointment of an administrator; or
 - (d) the Licensee, being an individual commits any act of bankruptcy or compounds with his creditors or comes to any arrangements with any creditors.
- 7.3 Upon termination of this Agreement, for any reason whatsoever, the Licensee shall forthwith cease its use of the Test Suites and return to the Custodian all Confidential Information in written, electronic or magnetic form and any copies thereof.
- 7.4 None of the parties shall have the right to recover damages or to indemnification of any nature, whether by way of lost profits, expenditures for promotion, payment for goodwill or otherwise made in connection with the business contemplated by this Agreement, due to the expiration or permitted or lawful termination of this Agreement. EACH PARTY WAIVES AND RELEASES THE OTHERS FROM ANY CLAIM TO COMPENSATION OR INDEMNITY FOR TERMINATION OF THE BUSINESS RELATIONSHIP UNLESS TERMINATION IS IN MATERIAL BREACH OF THIS AGREEMENT.

8. FORCE MAJEURE

None of the parties shall be liable for any delay in performing or failure to perform its obligations (other than a payment obligation) under this Agreement due to any cause outside its reasonable control. Such delay or failure shall not constitute a breach of this Agreement and the time for performance of the affected obligation shall be extended by such period as is reasonable.

9. ASSIGNMENT

The Licence is personal to the Licensee and the Licensee may not assign or otherwise transfer its rights or obligations under this Agreement.

The Custodian may upon notice to the Licensee assign this Agreement to a replacement custodian who shall have the same rights and obligations as the Custodian hereunder.

The Licensor may assign its rights and obligations hereunder upon notice to the Custodian.

10. NOTICES

All notices which are required to be given under this Agreement shall be in writing and shall be sent to the address of the recipient set out elsewhere in this Agreement or such other address as the recipient may designate by notice given in accordance with this Clause. Any such notice may be delivered personally, by first class pre-paid letter or facsimile transmission and shall be deemed to have been received:-

- (a) By hand delivery - at the time of delivery.
- (b) By first class post – forty-eight (48) hours after the date of mailing;
- (c) By facsimile, immediately on transmission provided a confirmatory copy is sent by first class pre-paid post or by hand by the end of the next business day.

11. SEVERABILITY

If any part of this Agreement is found by a court of competent jurisdiction or other competent authority to be invalid, unlawful or unenforceable then such part shall be severed from the remainder of this Agreement which shall continue to be valid and enforceable to the fullest extent permitted by law.

12. IRREPERABLE HARM

The Parties acknowledge that a material breach of Articles 2 and/or 5 would cause irreparable harm, the extent of which would be difficult to ascertain. Accordingly, they agree that, in addition to any other legal remedies to which a non-breaching party might be entitled, such party shall be entitled to obtain immediate injunctive relief in the event of a breach of the provisions of such Articles.

13. WAIVER

No waiver of any breach of this Agreement shall constitute a waiver of any other breach of the same or other provisions of this Agreement and no waiver shall be effective unless made in writing.

14. ENTIRE AGREEMENT

14.1 This Agreement is the complete and exclusive statement of the agreement between the parties relating to the subject matter of the Agreement and supersedes all previous communications, representations and arrangements, written or oral. The Licensee acknowledges that no reliance is placed on any representation made but not embodied in this Agreement.

14.2 Except as otherwise permitted by this Agreement, no change to its terms shall be effective unless it is in writing and signed by persons authorised on behalf of the parties.

15. GOVERNING LAW

This Agreement shall be construed in accordance with and governed by the Laws of England and each party agrees to submit to the non-exclusive jurisdiction of the English Courts. Headings have been included for convenience only and shall not be used in construing any provision herein.

EXECUTION:

Custodian:

Licensee:

By:

By:

Name:

Name:

Title:

Title:

(Date)

(Date)