

**OPEN INTERCONNECT CONSORTIUM, INC.**  
**UPnP® CERTIFICATION TESTING AND LICENSING AGREEMENT**

This UPnP Certification Testing and Licensing Agreement (the “CTLA”) is by and between the Open Interconnect Consortium, Inc. (“OIC”), with its principal place of business at 3855 SW 153rd Drive, Beaverton, OR 97003 and Licensee, as defined below. Except as modified herein, all terms and conditions of the underlying OIC Membership Agreement (the “**Agreement**”) and all Bylaws and Exhibits and any Amendments or Addenda thereto shall remain the same and in full force and effect as to Members of OIC only. THIS CTLA APPLIES SOLELY TO THE UPnP CERTIFICATION AND DOES NOT COVER OTHER OIC SPECIFICATIONS OR CODE.

**1. INDEX AND CERTAIN DEFINITIONS**

1.1 Index.

This CTLA includes the following:

Sections 1- 15	Terms of this CTLA
Exhibit A	Non-Member CTLA Application
Exhibit B	UPnP Certification Mark(s)

1.2 Definitions.

1.2.1 “**Affiliate**” shall mean an entity that directly or indirectly controls, is controlled by, or is under common control with another entity, so long as such control exists. “Control” means beneficial ownership of more than fifty percent of the voting stock or equity in an entity.

1.2.2 “**Certificate of Conformity**” means the certificate received from OIC for each Licensee Device for which the Licensee has submitted a Registration Form and which has been accepted by OIC as having passed the applicable Test in accordance with the UPnP Device Certification Process and this CTLA.

1.2.3 “**Certification Mark**” means that mark(s) and logo(s) attached hereto in Exhibit B, as amended from time to time by OIC, which are released pursuant to Section 4.1.3 of this CTLA.

1.2.4 “**Certified Device**” refers to each Licensee Device for which a Certificate of Conformity has been issued by OIC to Licensee, provided that the Certified Device shall not include (i) any version of the applicable Licensee Device that has been altered, modified or improved by or on behalf of the Licensee after receipt of the Certificate of Conformity in such a way that may impact UPnP functionality, unless a new Certificate of Conformity has been received by Licensee for such new revision; or (ii) any Licensee Device not conforming fully to the certification rights and obligations set forth in this CTLA.

1.2.5 “**Device Registration Form**” means a fully and properly completed form available at [www.openinterconnect.org](http://www.openinterconnect.org), as amended by OIC from time to time and incorporated

herein by reference, for each specific Licensee Device that the Licensee is seeking to qualify as a Certified Device.

1.2.6 “**Effective Date**” shall have the meaning set forth in Section 13.1.1.

1.2.7 “**Input**” shall mean all suggestions, comments, feedback, ideas and/or know-how (whether in oral, written or electronic form) provided by Licensee to OIC in connection with and/or related to the Tests and any Updates.

1.2.8 “**UPnP Logo Usage Guidelines**” are those guidelines for advertising, promotion and marketing materials, packaging and labels using the Certification Mark described in the document entitled *UPnP Logo Usage Guidelines* that specifies how and on which materials the Certification Mark may be used, which is available at [www.openinterconnect.org](http://www.openinterconnect.org), as amended by OIC from time to time and incorporated herein by reference.

1.2.9 “**Marketing Materials**” means those advertising, promotion and marketing materials, and packaging and labels of Licensee that are directly related to the sale of a Certified Device.

1.2.10 “**Licensee**” means the applicant identified on the applicable OIC Membership Agreement or Non-Member CTLA Application, who has signed this Agreement, and has maintained payment of any and all Memberships dues or fees called for herein.

1.2.11 “**Licensee Device**” shall mean software applications and devices of Licensee (or, if applicable, of an Affiliate) that are designed to implement the UPnP Standards, such as, without limitation, controlled devices, user control points, bridges and other applications.

1.2.12 “**Signed**” shall mean having undertaken any process with the intent to sign and be legally bound thereby, including, without limitation, having inscribed a written signature on paper or having typed a name adopted by the party intending to be bound sign in a location designated for a signature on a computer screen and then clicking an electronic button to submit such signature.

1.2.13 “**Term**” shall have the meaning set forth in Section 13.1.2.

1.2.14 “**Test(s)**” shall mean each executable software program, including, without limitation, XML documents and associated documentation prepared and approved by or on behalf of the OIC, for each device class designated by the OIC, used for the purposes of (a) implementing the UPnP Device Certification Process, and (b) testing the compliance of Licensee Devices with the UPnP Standards; provided that, if the context requires, “Test” shall mean only the particular test applicable to the device at issue.

1.2.15 “**OIC**” shall mean the Open Interconnect Consortium, Inc., the non-profit corporation that owns the Certification Mark and administers the UPnP Device Certification Process.

1.2.16 “**OIC Bylaws**” shall mean the bylaws of OIC, which are accessible to OIC Licensees via OIC website.

1.2.17 “**OIC Test Authors**” shall mean those persons or entities that have licensed a Test or Update, or some portion thereof, to OIC.

1.2.18 “**Updates**” shall have the meaning set forth in Section 4.2.2 below.

1.2.19 “**UPnP Work Group**” shall mean that Work Group established by OIC to administer the UPnP Device Certification Process and to establish rules and regulations of the UPnP Device Certification Process.

1.2.20 “**UPnP Device Certification Process**” shall mean the official process established by OIC for certifying Licensee Devices as compliant with the UPnP Standards. The document containing the UPnP Device Certification Process rules and regulations is available for review at [www.openinterconnect.org](http://www.openinterconnect.org), and, as amended from time to time by OIC, is incorporated herein by reference.

1.2.21 “**UPnP Standards**” means those specifications in the device control protocols (“DCPs”), which have been approved by the former UPnP Forum, and transferred to OIC, and which are available for review at [www.openinterconnect.org](http://www.openinterconnect.org), as amended from time to time, and are incorporated herein.

1.2.22 “**Usage Report**” shall mean that report submitted by Licensee to OIC pursuant to Section 5.3.4 below that includes the following information: (i) all Licensee’s use of the Certification Mark(s) pursuant to this CTLA, including, without limitation, the countries in which the Certification Mark has been used by Licensee; (ii) the status of any claims, disputes or controversies relating to or arising in connection with the subject matter of this CTLA; and (iii) any other information relating to this CTLA as OIC may from time to time request.

1.2.23 All other initially capitalized terms (except capitalized proper names) shall have the meanings assigned to them in this CTLA.

## **2. LICENSEE REQUIREMENTS**

### **2.1 Requirements for becoming a Licensee hereunder.**

The following is required to become a licensee hereunder:

2.1.1 Be a Member of OIC or Sign the Non-Member CTLA Application. Applicant must be a Member in good standing of OIC under the OIC Membership Agreement or sign the Non-Member CTLA Application.

2.1.2 Payment of Applicable Non-Member CTLA Application Fee. Licensee must pay all applicable fees set forth in the Non-Member CTLA Application. OIC Members must maintain their Membership in OIC, including the payment of applicable dues.

2.1.3 Acceptance of this CTLA. Licensee agrees (on behalf of itself and any and all applicable Affiliates) to be fully bound by the terms of this CTLA as set forth herein (including amendments made pursuant to the provisions of this CTLA).

2.1.4 Information. Licensee must accurately, correctly and completely provide all information requested of Licensee in this CTLA and the Exhibits hereto. To the extent any information provided to OIC by Licensee becomes inaccurate, incorrect or incomplete at any time during the Term of this CTLA, Licensee shall promptly provide OIC with notice of the accurate, correct and complete information.

## 2.2 Affiliates.

2.2.1 Rights of Affiliates. As of the Effective Date and subject to all the terms of this CTLA including, without limitation, this Section 2.4.1, Affiliates of Licensee shall have the right to exercise the rights granted to Licensee hereunder to the same extent as Licensee and shall be subject to the restrictions and obligations applicable to Licensee set forth in this CTLA. All rights or benefits sought by any Affiliate of Licensee under this CTLA, including but not limited to the issuance of Certificates of Conformity, will be provided and conducted in the name of the Licensee unless the Affiliate is separately and independently a Licensee.

Licensee shall, at OIC's request, provide written documentation demonstrating Licensee's authority to bind any Affiliates of Licensee as set forth in this Section 2.4 who seeks to utilize any rights under this CTLA. OIC may require proof of such a relationship at any time, including, but not limited to, prior to any use of a Test or submission of a Device Registration Form for any Licensee Device. No Affiliate shall be entitled to any rights or benefits under this CTLA unless and until such Affiliate has authorized Licensee to bind Affiliate and Affiliate is bound to all the terms of this CTLA.

2.2.2 Licenses to Affiliates. Nothing herein shall prevent any Affiliates from separately becoming independent and direct Licensee, provided such entity independently and directly complies with all other requirements for Licensees hereunder.

2.2.3 Joint and Several Liability. Licensee and its Affiliates are jointly and severally liable for their obligations and liabilities under this CTLA.

## 3. **LICENSE GRANT**

### 3.1 Test License.

3.1.1 License Grant. Subject to all terms and conditions set forth in this CTLA, OIC hereby grants to Licensee during the Term a limited, non-exclusive, worldwide, revocable, non-transferable, royalty-free, fully paid-up right and license to install and use the Test on computers, including workstations, terminals or other digital electronic devices, solely in the form of the executable computer code provided by OIC and solely for the purpose of testing Licensee Devices to determine such Licensee Device's compliance with UPnP Standards in accordance with the UPnP Device Certification Process.

3.1.2 Limited Sublicense Grant. Solely in the event that Licensee seeks to engage a third-party to administer the Test in order to determine whether a Licensee Device is compliant with the UPnP Standards, Licensee may grant to such third party a limited, non-exclusive, revocable, non-transferable and royalty-free right to use the Test solely for the limited purpose of administering the Test in connection with the Licensee Device that Licensee seeks to have certified as a Certified Device. Licensee shall require all such third parties to agree to a Signed writing to all terms and conditions necessary and appropriate to protect OIC's right, title and interest to the Tests, including, but not limited to, all applicable terms and conditions of this CTLA, and providing that OIC shall be a third party beneficiary of such agreement(s).

3.1.3 Certain License Restrictions. Licensee shall not through itself or third parties, reverse engineer, decompile, disassemble or otherwise attempt to discover the source code or underlying algorithms of the Test(s). If a Licensee wishes to access the Test source code, the Licensee may request it from OIC for the limited reasons outlined in the UPnP Device Certification Process document. If OIC has rights for such source code and OIC, in its discretion, grants the request of Licensee to access such code, a separate license for such source code between the Licensee and OIC will be provided by OIC and must be executed by Licensee in order to access or use source code. Except as expressly permitted by the provisions of this CTLA, Licensee shall not reproduce, distribute, perform or display the Test(s), or remove any proprietary notices or labels of OIC and/or OIC Test Authors on the Test(s). Licensee shall not modify, translate, enhance or change the Tests in any manner, or combine, merge or embed the Tests with or in any other software. Licensee shall not omit portions or use a partial version of the Tests. Licensee shall have no right to create derivative works of any Tests.

### 3.2 Certification Mark License.

3.2.1 License Grant. OIC hereby grants to the Licensee a limited, non-exclusive, worldwide, revocable, non-transferable license to use the Certification Mark solely in accordance with the UPnP Logo Usage Guidelines during the Term of this CTLA and solely (i) to indicate that a Certified Device has met the UPnP Standards; and (ii) either (A) on Certified Devices in accordance with the UPnP Logo Usage Guidelines, or (B) in Marketing Materials directly related to the Certified Devices in accordance with the UPnP Logo Usage Guidelines.

3.2.2 Sublicense Grant. OIC hereby grants to the Licensee a limited, non-exclusive, worldwide, revocable, non-transferable license to sublicense the Certification Mark to third parties with which Licensee has contracted (i) to manufacture, assemble, sell or distribute a Certified Device solely for the limited purpose of using the Certification Mark on Certified Devices in accordance with the UPnP Logo Usage Guidelines; or (ii) to advertise, publicize or market a Certified Device solely for the limited purpose of preparing and using Marketing Materials directly related to the Certified Devices in accordance with the UPnP Logo Usage Guidelines. Licensee shall require all such third parties to agree to a Signed writing to all terms and conditions necessary and appropriate to protect OIC's right, title and interest to the Certification Marks, including, but not limited to, all applicable terms and conditions of this CTLA, and providing that OIC shall be a third party beneficiary of such agreement(s).

3.2.3 Certain Geographic or Usage Limitations. In the event OIC determines that use of the Certification Mark, in any particular manner, in any particular jurisdiction, or on

any particular device or Marketing Materials may violate any applicable laws or regulations, be contrary to public policy or may subject Licensee or OIC to any third party claims, legal proceedings, governmental investigations or proceedings, penalties or liabilities, upon receipt of notice and request from OIC, Licensee agrees to promptly cease and desist from all use of the Certification Mark in such particular manner, in such particular jurisdiction, and/or such particular device or Marketing Materials.

3.2.4 Control. OIC shall have absolute determination and control, in its sole discretion, over the design, redesign, modification, change, enhancement, improvement, authorized or unauthorized use, manner and degree of application, manner and extent of registration, maintenance, protection, enforcement, ownership, licensing, use and termination of the Certification Mark, UPnP Logo Usage Guidelines, and UPnP Device Certification Process.

3.2.5 Certain License Restrictions. The licenses granted in this Section 3.2 may be used solely in connection with Certified Devices of the Licensee, and are subject to the restrictions and obligations of Licensee set forth in this CTLA, including, without limitation, the following:

3.2.5.1 Licensee shall not modify, enhance or change the Certification Mark or combine it with another mark, or use, adopt or register any marks confusingly similar to the Certification Mark.

3.2.5.2 Licensee shall not omit portions or use a partial version of the Certification Mark.

3.2.5.3 Licensee shall not use the Certification Mark as a domain name, including, without limitation, as a sub-domain name.

3.2.5.4 Licensee shall not use the Certification Mark: (a) in any manner that is likely to reduce, diminish or damage the goodwill, value or reputation associated with the Certification Mark; (b) in any manner as would violate the rights of any third parties; (c) in any manner as would result in any third party claim or in any governmental investigation, claim or proceeding alleging unlawful or improper use of the Certification Mark; (d) on or in connection with any other devices or marketing materials other than the Certified Device or Marketing Materials; or (e) in any manner other than as a Certification Mark on Certified Device, without the prior written consent of OIC.

3.2.6 Components. If the Certified Device constitutes only a part or portion of another or larger device of the Licensee, the Licensee may only use the Certification Mark in reference to that portion of the Licensee's device that constitutes the Certified Device, and must specifically indicate which part or portion of the Licensee's device constitutes the Certified Device in all Marketing Material that use the Certification Mark.

## **4. CERTAIN OBLIGATIONS OF OIC**

### **4.1 Device Certification Process.**

4.1.1 UPnP Device Certification Process. OIC has established and will continue to develop the UPnP Device Certification Process by which the Licensees of OIC will be able to demonstrate compliance with the UPnP Standards. The UPnP Device Certification Process may be amended by OIC from time to time at OIC's sole discretion.

4.1.2 Certificate of Conformity. Upon receipt of any applicable device registration fees, a properly completed Device Registration Form from Licensee, and a file of test results indicating a passing score on the applicable Test, OIC will promptly issue a Certificate of Conformity for the Licensee Device indicated on the Registration Form.

4.1.3 Access to Certification Mark. OIC will make available on OIC website, to be accessed by Licensee in accordance with the rules in the UPnP Device Certification Process document following issuance of a Certificate of Conformity, the Certification Mark for Licensee's use in connection with that Certified Device in accordance with the terms of this CTLA.

### **4.2 Availability of Tests**

4.2.1 Access to Tests. OIC will make available on OIC website the currently available Tests that Licensee may use pursuant to the terms of this CTLA for the testing of each specific Licensee Device that the Licensee seeks to have certified as meeting the UPnP Standards in accordance with the UPnP Device Certification Process Document. OIC may, in its reasonable discretion and with notice (by posting on OIC website or otherwise), revoke access to and cease certifying devices under any Test that OIC determines is not functioning properly, including, without limitation, any Test that fails to properly test the compliance of Licensee Devices with the UPnP Standards.

4.2.2 Test Maintenance/Updates. OIC is not obligated to provide maintenance, technical support or updates to Licensee for the Tests. OIC may, however, in its sole discretion, provide technical support, updates, upgrades, revisions, successors and/or supplements to the Tests and/or related information (collectively, "**Updates**") to Licensee during the Term, in which case such Updates shall also be deemed to be included in the Tests, and therefore governed by this CTLA, unless other terms of use are provided by OIC with such Updates.

## **5. CERTAIN OBLIGATIONS OF LICENSEE**

### **5.1 Device Certification Process.**

5.1.1 Compliance With UPnP Device Certification Process. Licensee shall comply in full with the UPnP Device Certification Process for each Licensee Device. In the event OIC, in its sole discretion and at any time upon notice to Licensee, amends the UPnP Device Certification Process, Licensee agrees to comply with the UPnP Device Certification Process as so amended from and after the date any such amendment is posted by OIC on OIC website.

5.1.2 Testing. Licensee will conduct or arrange for the testing of each specific Licensee Device that the Licensee seeks to have certified as a Certified Device in accordance with the UPnP Device Certification Process. Licensee shall test Licensee Device against the most current applicable version of the Test (including, if applicable, any Updates) for the applicable device class available at the time of testing. If the Licensee Device passes the most current applicable Test, Licensee will fully, accurately and promptly complete a Device Registration Form and submit it, along with a file of the results of the test of the Licensee Device and any applicable fees, to OIC. Licensee is not authorized under this CTLA to, and shall not, alter or otherwise modify a Test. Licensee shall not alter or otherwise modify the results of a Test for any device.

5.1.2.1 The “most current applicable version of the Test” as used in Section 5.1.2 means the Test with the most recent date of first posting on OIC website that is applicable to the particular Licensee Device at issue. Notwithstanding any other provision of this Section 5.1.2, solely for a period of six (6) months after such date (or for such other time period as specified by OIC in the UPnP Device Certification Process document), Licensee may test a Licensee Device against the immediately prior version of the Test, provided that such prior version of the Test has not been revoked by OIC pursuant to Section 4.2.1 above. After this period, Licensee may not qualify a Licensee Device under any earlier version of the applicable Test.

5.1.3 Certificate of Conformity. Licensee may obtain the Certification Mark for use in connection with Certified Devices from OIC website.

5.1.4 Limitation on Third Party Usage. Without limitation on other license restrictions and obligations set forth in this CTLA, other than as expressly provided in Section 3.1.2, Licensee may not offer a Test (including, without limitation, any portion thereof) to any third-party for any use whatsoever.

## 5.2 Modified Devices.

5.2.1 Testing. In the event a Certified Device is upgraded, modified, altered or improved by or on behalf of the Licensee in any way which may impact the compliance of the device with the UPnP Standards (a “**Modified Device**”), the Modified Device will constitute a new device distinct and different from the Certified Device. The Modified Device must be subjected to and pass the then-current applicable Test in accordance with Sections 4.1 and 5.1.2 above and the UPnP Device Certification Process in order to be accepted as Certified Device.

5.2.2 Certification Mark. Unless and until OIC has issued a Certificate of Conformity for the Modified Device and accepted it as a Certified Device, Licensee may not use the Certification Mark in connection with the Modified Device or the sale, marketing or advertising thereof.

5.2.3 Exception to Modified Device Requirements. In the event a Certified Device is modified (from the exact version tested under the UPnP Device Certification Process according to which the Certificate of Conformity was issued) in a way that does not impact the compliance of the device with the UPnP Standards, the Licensee shall provide to OIC a sworn



declaration from Licensee (or, if Licensee is not the manufacturer, the manufacturer of the Certified Device) that such modification does not impact the compliance of the device with the UPnP Standards. Licensee can then continue to enjoy all rights granted herein to the extent such declaration is accurate. This Section 5.2.3 shall not limit Licensee's obligations under Section 5.2.1 above or any rights of OIC under this CTLA. Receipt by OIC of a declaration pursuant to this Section 5.2.3 shall not be deemed acceptance by OIC of the substance of the notice and shall not limit OIC's rights under this CTLA, and shall not, without limitation, be deemed a waiver by OIC of Licensee's obligations under Section 5.2.1 above.

### 5.3 Certification Mark.

5.3.1 Compliance with Laws. Licensee agrees to comply with all applicable laws, codes and regulations in the use of the Certification Mark, including without limitation any and all export control, customs, consumer devices, unfair competition, trade regulation and advertising laws, rules and regulations.

5.3.2 Compliance With UPnP Logo Usage Guidelines. Licensee agrees to comply with the UPnP Logo Usage Guidelines. In the event OIC, in its sole discretion and at any time upon notice to Licensee, amends the UPnP Logo Usage Guidelines, Licensee agrees to comply with the UPnP Logo Usage Guidelines as so amended from and after the date OIC posts the amendments on OIC website.

5.3.3 Assistance. Licensee agrees to provide all reasonable cooperation as OIC may request in connection with the registration, protection or prosecution of registrations for the Certification Mark. Such assistance shall include, without limitation, provision at the request of OIC of specimens accurately and fully demonstrating Licensee's use of the Certification Mark.

5.3.4 Usage Reports. Licensee agrees to provide OIC or its designated legal counsel with a Usage Report annually, or on a less frequent basis to the extent requested and announced by OIC.

5.3.5 No Transfer/Assignment. Licensee agrees that the rights granted to the Licensee in this CTLA are personal to the Licensee and may not be sublicensed, assigned or transferred in whole or in part by the Licensee without the prior written consent of OIC except only to the extent expressly permitted in this CTLA.

### 5.4 Certain Other Obligations Of Licensee.

5.4.1 Public Relations. Licensee agrees that any of OIC Licensees may make a press or other public announcement regarding its own activities as a Licensee of OIC, so long as it conforms to any confidentiality obligations set forth in this agreement. The Licensee shall not represent or make statements on behalf of OIC without the express written approval of OIC. In addition, Licensee agrees that OIC may release the names of any Licensees as may be required by applicable law.

5.4.2 Enforceability. If, at any time during the Term of this CTLA, Licensee becomes aware of any provision of this CTLA that may not be enforceable according to the

representations and warranties set forth in Section 9, Licensee shall promptly notify OIC of all circumstances surrounding the issues regarding enforceability of such provision.

## **6. AUDITS**

OIC may, in its sole discretion and at any time, conduct audits by means of testing or review of any Certified Device of Licensee. OIC may obtain the Certified Device upon request from the Licensee or by retail purchase. OIC may subject the device and associated material (“Audited Device”) to the original Test the device was certified with, or if the original Test had a significant bug, the debugged version of this Test, as well as to any other testing or review as OIC may reasonably consider is necessary in order to determine whether the terms and conditions, licenses, Usage Guidelines and other provisions of this CTLA have been fully complied with by Licensee or any sublicensee. OIC will use a third party tester for auditing of devices.

If the Audited Device passes OIC-administered Test, the Licensee will retain its license to use the Certification Mark in connection with the Certified Device, and OIC will be solely responsible for any costs or expenses associated with the audit of the Audited Device under this Section 6. If the Audited Device does not pass OIC-administered Test, OIC will provide Licensee with the failed test results, and the Licensee has sixty (60) days to dispute the failure. If, after 60 days, it has been determined by OIC that the device passes the Test, the Licensee need not reimburse OIC for testing costs. However, if, after sixty (60) days, it has been determined by OIC that the device still fails, the Licensee must within an additional sixty (60) days of notice by OIC (1) reimburse OIC for any and all costs and expenses associated with the audit; (2) correct the Audited Device and re-test it against the applicable Test; and (3) submit evidence of a passing result of the Audited Device (as corrected) when tested against the applicable Test. In the event the Audited Device still does not pass the applicable Test, (1) the Audited Device will be de-certified; (2) OIC may revoke the license rights granted Licensee under Section 3.2 of this CTLA with respect to the Audited Device in accordance with the UPnP Device Certification Process; and (3) and Licensee will promptly cease and cause to be discontinued all uses of the Certification Mark in connection with the Audited Device.

Audit testing can occur on any device type. Audits will occur either as a result of a random selection or because OIC has probable cause to question the proper certification of a particular device (e.g., by way of consumer complaints as to the UPnP functionality of a certified device, modifications to the device subsequent to certification, in-field observations, etc.).

## **7. OWNERSHIP AND RIGHTS**

### **7.1 Certification Mark Ownership.**

**7.1.1 Ownership.** OIC owns and retains all right, title and interest in and to the Certification Mark, including, without limitation, all registrations, applications, common law rights and the goodwill associated with the Certification Mark. Except for the limited license to use the Certification Mark as expressly set forth in Section 3.2 of this CTLA, Licensee shall neither have nor acquire any right, title or interest in and to the Certification Mark. Any and all uses of the Certification Mark shall inure to the benefit of OIC.

7.1.2 Protection of Ownership Rights. Licensee will not challenge the rights of OIC in and to the Certification Mark. Examples of such prohibited actions by Licensee include, but are not limited to, the use, registration or acquisition of any trademark, servicemark, domain name or trade name that the law determines threatens, conflicts with, dilutes or otherwise harms either OIC's rights in and to the Certification Mark or the Certification Mark itself.

7.1.3 Assistance. Licensee agrees to provide such reasonable information, assistance and/or support as may be reasonably necessary to enable OIC to apply for, obtain and maintain registration of the Certification Mark in any and all jurisdictions worldwide as determined by OIC in its sole discretion, and enforce any and all the rights, title and interests of OIC in and to the Certification Mark in any and all jurisdictions worldwide as determined by OIC in its sole discretion.

7.1.4 Assignment. Licensee hereby assigns to OIC, and, if applicable, OIC Test Authors, all right, title: and interest in and to (if any) the Certification Mark that Licensee may acquire by operation of law or otherwise.

## 7.2 Test Ownership And Rights.

7.2.1 Ownership. Licensee recognizes and agrees that (i) OIC, and, if applicable, OIC Test Authors, shall retain all right, title and interest in the Test and any Updates, and (ii) Licensee has no rights or interests in the Test or any Updates, other than the rights specifically granted to Licensee pursuant to this CTLA.

## 7.3 Input.

7.3.1 Contribution of Input. To the extent that Licensee provides any Input in conjunction with or related to the exercise of the rights granted to Licensee pursuant to this CTLA, all such Input is and shall be given entirely voluntarily. To the extent that the Input includes material subject to copyright, patent, trade secret or other proprietary rights protection, Licensee hereby grants to OIC a limited, non-exclusive, worldwide, perpetual, irrevocable, royalty-free, fully paid-up license, with the right to sublicense to third parties (including the right to sublicense to further third parties), to use such Input for any purpose connected with or related to the Test, any Updates, and/or the UPnP Device Certification Process, and for any other purpose arising out of or related to the testing software licensed to Licensee hereunder, development of UPnP Devices, and/or implementation of any device control protocols approved by the former UPnP Forum.

7.3.2 Inclusion in Test. OIC provides no assurance that any alleged errors or discrepancies in the Test that are identified by Licensee in such Input will be corrected; provided, however, that to the extent that Licensee provides any such Input that is incorporated into the Test, such Input shall also be deemed to be included in the Test and therefore governed by this CTLA, and pursuant to Sections 3.1, all Licensees are entitled to a grant of rights in that Test as modified. For purposes of clarification, but without limitation, nothing in this Section 7.3 shall be construed to require Licensee to provide any Input.

#### 7.4 Rights Reserved.

In no event shall any license granted to Licensee pursuant to this CTLA be construed as granting to Licensee, expressly or by implication, estoppel or otherwise, a license under any of OIC's or any of OIC Test Authors' rights under any patents, copyrights or other intellectual property, including, without limitation, OIC's and OIC Test Authors' rights in and to the Certification Mark, the Tests, any Updates and/or Input. All rights in and to the Certification Mark, the Tests, any Updates and any Input not expressly granted to Licensee in this CTLA are reserved to OIC and/or to OIC Test Authors.

#### 7.5 Assistance.

Licensee agrees to execute and deliver such instruments and take such other actions as may be reasonably requested by OIC (and, if applicable, OIC Test Authors) from time to time to perfect or protect the rights of OIC and/or OIC Test Authors in the Tests and any Updates and Input and to carry out the assignments set forth in Section 7.1.4 and in Section 7.2.1 above.

#### 7.6 No Encumbrances.

Licensee shall not take or allow to be taken a lien or other security interest, or otherwise encumber in any manner, any of OIC's or any OIC Test Authors' intellectual property, including, but not limited to, the Tests, the Certification Mark(s) and any rights, such as copyrights and registrations relating to such Tests and/or Certification Marks. Licensee shall promptly satisfy any liens placed or filed in breach of the foregoing, release any security interests taken in breach of the foregoing and otherwise satisfy and/or release any encumbrances related to the foregoing. OIC may satisfy any such liens and/or encumbrances that are not promptly satisfied by Licensee, at Licensee's sole cost and expense. Licensee shall also promptly execute such documents and otherwise assist OIC in releasing and satisfying any and all such liens, interests and/or encumbrances. Licensee shall, promptly upon OIC's request, reimburse OIC for all of OIC's costs and expenses incurred under this Section.

### 8. **CONFIDENTIALITY**

#### 8.1 Definition.

The term "**Confidential Information**," as used in this CTLA, means any type or class of information which the producing party in good faith considers containing or constituting confidential, proprietary or commercially sensitive and that is designated as "Confidential Information" by the producing party, whether it be a document, device, data file or other information. Confidential Information of Licensee shall include, without limitation, device design information, engineering data, marketing information, Usage Reports (unless Licensee has indicated that the information contained in Usage Reports may be disclosed, in which event such information does not constitute Confidential Information under this Section 8), the data file of any Test results (other than an indication of "pass" or "fail") and any data submitted by Licensee in an escalation procedure pursuant to the UPnP Device Certification Process submitted to OIC by Licensee. Notwithstanding the foregoing, Confidential Information shall not include: (i) information which the receiving party can establish was lawfully in its possession prior to disclosure by the other party; (ii) information obtained by the receiving party from a source not

under obligation of secrecy or confidentiality to the disclosing party; (iii) information discovered independently and without the use of documents or other information designated as “Confidential Information”; (iv) information that is made public other than by action of the receiving party.

## 8.2 Obligations.

Any party receiving Confidential Information from another party to this CTLA may not disclose such Confidential Information to any third party unless expressly permitted by provisions of this CTLA.

## 8.3 Exceptions to Confidentiality.

A party receiving Confidential Information may disclose such Confidential Information under the following circumstances:

8.3.1 to its legal, financial and any other professional consultants, provided that any person to whom Confidential Information is disclosed by the receiving Party shall be advised of confidentiality obligations set forth in this Section 8 and shall agree to be bound by its terms prior to such disclosure.

8.3.2 in response to a duly issued order of a court or other administrative or arbitral authority of competent jurisdiction (including, without limitation, a properly issued subpoena of a court of competent jurisdiction), provided that the receiving party provide at least forty-eight (48) hours notice to the producing party of such order prior to disclosure;

8.3.3 OIC may compile and maintain the following information: the name and version information of any and all Certified Devices, the name and contact information of any and all Licensees (including Affiliates), the dates of any and all successfully passed Tests (including applicable Test and testing facility) and the current status of the certification of any and all Licensee Devices. OIC may make the name and contact information of any and all Licensees (including Affiliates) publicly available. In addition, OIC may provide information (including, without limitation, Licensee contact information, information concerning test results, Licensee Device identity and version or release numbers) as OIC deems reasonably technically necessary to the author of a Test in connection with OIC’s notification to the author of a bug or other problem with the Test, provided that such information is subject to the confidentiality protections afforded OIC confidential information under the Test Author’s License Agreement. If permission is granted by Licensee on a Device Registration Form for a Licensee Device, OIC may also make publicly available the name and version information of the referenced Licensee Device, the dates of any and all Tests successfully passed by the referenced Licensee Device (including applicable Test and testing facility) and the current status of the certification of the referenced Licensee Devices.

8.3.4 In the event that a party receives an order or other legal process that may compel or require the disclosure of Confidential Information, the confidentiality obligations of this Section 8 shall not apply in that context. The party receiving such order or legal process shall give written notice of same to the other party within ten (10) business days of receipt in the order.

## **9. REPRESENTATIONS & WARRANTIES**

### **9.1 Continuous.**

The representations, warranties and covenants in this Section 9 are continuous in nature and shall be deemed to have been given by Licensee upon execution of this CTLA and at each stage of performance hereunder.

### **9.2 Representations & Warranties.**

The Licensee hereby represents and warrants as follows:

9.2.1 it is duly authorized and has the power and authority to execute and deliver this CTLA and the exhibits hereto and to obligate the Licensee and its Affiliates on whose behalf it is entering into this CTLA to perform its obligations hereunder.

9.2.2 it will procure such authorization to bind Affiliates to this CTLA prior to any such Affiliate seeking to utilize any such rights hereunder.

9.2.3 it is not presently under, nor will it enter into in the future, any agreement, commitment, understanding or other obligation, whether written or oral, which is inconsistent or in conflict with this CTLA.

9.2.4 it is not presently under, nor will it enter into in the future, any agreement, commitment, understanding or other obligation, whether written or oral, that, to the best of its knowledge, would in any way or to any extent intentionally prevent, limit or otherwise impair its performance of any of its obligations hereunder or in connection herewith.

9.2.5 that in the performance of this CTLA, it shall comply with all applicable laws, regulations, rules, union rules, orders and other requirements of governmental authorities having jurisdiction over the parties, including without limitation all applicable laws pertaining to antitrust and unfair competition.

9.2.6 that, to the best of its knowledge, this CTLA is enforceable in the jurisdictions in which Licensee (and its applicable Affiliates) intends to operate under its provisions as this CTLA is written in English and according to its plain meaning under the governing law provision set forth in Section 14.4.

9.2.7 that based upon the actual knowledge of Licensee's employee(s) providing any Input to OIC, such Input (i) is owned by Licensee, or Licensee has sufficient rights therein to effectively license to OIC such rights therein as specified in Section 7.3.1; and (ii) will not infringe or violate any copyright, patent, trade secret, trademark or other proprietary or contract right of any third party.

## **10. INDEMNIFICATION**

Licensee hereby agrees to defend (including pay the defense costs of), indemnify and hold harmless OIC and OIC Test Authors, subsidiaries, affiliates, joint ventures, third-party

agents, permitted sublicensees (other than Licensee) and successors, and its and their directors, officers, employees and agents (collectively, “**OIC Claimants**”) from any and all claims, disputes, demands and proceedings brought by a third party (excluding Licensee hereunder) (“**Indemnified Claims**”), and any and all resulting costs, liabilities, losses, expenses and damages (including reasonable attorneys’ fees, costs and expert witnesses’ fees) (“**Losses**”) arising out of, in connection with, or in any way related to (a) acts or omissions of the Licensee in connection with the Test; (b) acts or omissions of Licensee in connection with the Certification Mark or the Marketing Materials; (c) the design, manufacture, sale, provision, promotion, marketing, distribution, service and support of any device of Licensee; or (d) the manner in which Licensee, its officers, directors, employees, agents, representatives, distributors, dealers or resellers conduct their business(es). OIC shall use reasonable efforts to give Licensee prompt notice of any Indemnified Claim. OIC shall have the right to employ separate counsel and participate in the defense of any Indemnified Claim. Licensee shall pay OIC upon demand for any Losses incurred by OIC Claimants at any time after the Effective Date based upon the judgment of any court of competent jurisdiction or pursuant to a bona fide compromise or settlement of an Indemnified Claim. Licensee agrees to perform all judgments or awards, including any settlement agreements of which Licensee has notice and opportunity to participate, prior to conclusion. OIC shall provide Licensee with non-confidential information, assistance and authority, at Licensee’s expense and reasonable request, to help Licensee defend such claim or action. Licensee will not be responsible for any settlement made by OIC Claimants without Licensee’s written permission, which permission will not be unreasonably withheld or delayed. Licensee may not settle any claim or action on behalf of OIC Claimants without first obtaining OIC’s written permission, which permission will not be unreasonably withheld. In the event OIC and Licensee agree to settle a claim or action, Licensee shall not publicize the settlement without first obtaining OIC’s written permission, which may be granted or withheld in OIC’s sole discretion.

## **11. DISCLAIMER OF WARRANTIES**

### **11.1 Licensee Disclaimer of Warranties.**

ALL INFORMATION, SERVICES, DATA AND DEVICES PROVIDED AS PART OF THE LICENSEE’S RELATIONSHIP WITH OIC ARE PROVIDED “AS IS” AND WITH NO WARRANTIES WHATSOEVER, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. WITHOUT LIMITATION OF THE FOREGOING, LICENSEE HEREBY EXPRESSLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY, NONINFRINGEMENT, FITNESS FOR ANY PARTICULAR PURPOSE WITHOUT LIMITATION ON THE FOREGOING, OIC MAKES NO REPRESENTATION OR WARRANTY AS TO NON-INFRINGEMENT BY THE CERTIFICATION MARK(S) OF THIRD PARTY TRADEMARKS, AND OIC UNDERTAKES NO OBLIGATION TO REGISTER THE CERTIFICATION MARK(S) IN ANY JURISDICTION.

### **11.2 OIC Disclaimer of Warranties.**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, OIC AND THE OIC TEST AUTHORS PROVIDE THE TESTS, ANY UPDATES AND THE CERTIFICATION MARK “AS IS” AND “WITH ALL FAULTS,” AND HEREBY DISCLAIM

WITH RESPECT TO THE TESTS, ANY UPDATES, THE CERTIFICATION MARK AND THE PERFORMANCE OF THEIR OBLIGATIONS UNDER THIS ADDENDUM ALL WARRANTIES, DUTIES AND CONDITIONS WHATSOEVER, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF OR RELATED TO: MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, LACK OF VIRUSES, ACCURACY OR COMPLETENESS OF RESPONSES, RESULTS, WORKMANLIKE EFFORT, LACK OF NEGLIGENCE, TITLE, QUIET ENJOYMENT, QUIET POSSESSION, CORRESPONDENCE TO DESCRIPTION, NON-INFRINGEMENT OR VIOLATION OF ANY PARTY RIGHTS, OR ANY WARRANTY OTHERWISE ARISING IN ANY WAY OUT OF THESE TERMS NOR IS ANY REPRESENTATION OR WARRANTY MADE WITH RESPECT TO THE GOODWILL ASSOCIATED AT ANY TIME WITH THE CERTIFICATION MARK. THE ENTIRE RISK AS TO THE QUALITY, OR ARISING OUT OF THE USE OR PERFORMANCE OF, THE TEST AND ANY UPDATES REMAINS WITH LICENSEE.

## **12. LIMITATIONS OF LIABILITY**

### **12.1 Limitations of Liability.**

IN NO EVENT WILL OIC, OR ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, REPRESENTATIVES OR SUPPLIERS, BE LIABLE TO LICENSEE OR ANY THIRD PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND OR NATURE, AND ATTORNEYS FEES AND COSTS RELATING TO ANY OF THE FOREGOING, WHETHER ARISING UNDER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, WARRANTY OR OTHERWISE, AND ARISING OUT OF OR IN CONNECTION WITH OR IN RELATION TO THIS ADDENDUM (INCLUDING, BUT NOT LIMITED TO, THE UPNP STANDARDS, UPNP DEVICE CERTIFICATION PROCESS AND THE ESTABLISHMENT, INTERPRETATION AND ADMINISTRATION THEREOF, THE USE OF OR INABILITY TO USE THE TESTS, ANY MODIFICATIONS, CHANGES OR DECISIONS RELATING TO THE TESTS, ANY UPDATES, THE PROVISION OF OR FAILURE TO PROVIDE UPDATES, THE CERTIFICATION MARK, ANY ACTS OR OMISSIONS OF OIC OR ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES WITH RESPECT THERETO), EVEN IF OIC, A OIC CLAIMANT OR ANY OIC SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING SHALL APPLY, WITHOUT LIMITATION, WHETHER OR NOT RELATED TO ANY LOSS OF USE, LOSS OF DATA, LOST OPPORTUNITIES, LOST PROFITS, THE COST OF PROCURING SUBSTITUTE GOODS OR SERVICES, LOSS OF CONFIDENTIAL OR OTHER INFORMATION, BUSINESS INTERRUPTION, PERSONAL INJURY OR LOSS OF PRIVACY.

### **12.2 Additional Limits.**

In no event shall OIC's aggregate liability under this CTLA to Licensee, any Affiliates or any other third person(s), exceed the amount of fees actually paid by Licensee to OIC under this CTLA, or in the case of OIC Members, the current, paid OIC Membership fees.



### 12.3 Assumption of Risks and Other Limitations.

12.3.1 Assumptions of Risks. Licensee assumes all risks, and resulting liabilities and obligations, arising out of or resulting from its use of or access to the UPnP Device Certification Process, UPnP Standards, the Certification Mark and any other materials (including, without limitation, Updates and data) provided by OIC and/or a Test Author.

12.3.2 No Duty to Defend. Without limitation on the foregoing, OIC, its officers, directors, employees, agents, representatives and suppliers, shall be under no obligations to defend Licensee or any of its Affiliates against any claims, disputes or proceedings asserted by any third party or before any governmental agency or authority, alleging misappropriation or infringement of proprietary rights, intellectual property rights or violation of any laws or regulations arising out of or resulting from Licensee's use of the Certification Mark, UPnP Standards, UPnP Device Certification Process or Marketing Materials.

### 12.4 Basis of the Bargain.

The parties acknowledge that OIC entered into this CTLA in reliance upon its warranty disclaimers and the limitations of liability set forth in this CTLA, and that such disclaimers and limitations are an essential basis of the bargain between the parties.

## 13. **TERM AND TERMINATION**

### 13.1 Term.

13.1.1 Duration of Term. Unless earlier terminated in accordance with its terms, this CTLA shall be effective as of the later of the date on which this CTLA is fully executed and, in the case of Non-Members, the date of OIC's receipt of Licensee's annual Non-Member CTLA Application fee pursuant to Section 2.3.2 (the "**Effective Date**"), and shall continue for a period of one (1) year thereafter (the "**Initial Term**").

13.1.2 Automatic Renewal. Unless earlier terminated in accordance with this Section 13 and subject to OIC Member's maintaining their membership in good standing or OIC's timely receipt of Licensee's annual Non-Member CTLA Application fee pursuant to Section 2.3.2, this CTLA will be automatically renewed at the expiration of the Initial Term and/or the then-current Renewal Term, as applicable, for successive terms of one (1) year each (each a "**Renewal Term**," and collectively the "**Renewal Terms**," and together with the Initial Term, the "**Term**") unless either party gives the other party written notice of election not to renew this CTLA at least thirty (30) days prior to the expiration of the then-current term, in which event this CTLA shall terminate at the expiration of the then-current term.

### 13.2 Termination by OIC.

13.2.1 OIC Bylaws. OIC may terminate this CTLA as to OIC Members for cause as provided in OIC Bylaws.

13.2.2 For Failure To Pay OIC Dues or Non-Member Fees. If the Licensee allows its License to lapse by failing to pay the then current Membership fees or Non-Member

CTLA Application fees or if an OIC Member voluntarily withdraws or its OIC membership expires, then this CTLA shall terminate, and then all rights granted to Licensee under this CTLA shall terminate in accordance with Section 13.4 and 13.5. However, if such termination is caused solely by Licensee's failure to pay fees, Licensee may cure such failure within thirty (30) days of the date on which such annual fees were due and OIC will treat such payment as if it were timely made so that Licensee's rights under this CTLA shall not terminate.

13.2.3 Limited Termination Option. Upon the occurrence of any event giving rise to a right to OIC to terminate this CTLA (including, without limitation, the provision of notice by OIC under Section 13.3.2), OIC may, in its sole discretion and in accordance with the provisions for termination set forth in this Section 13, terminate either the entire CTLA or only the license to the Certification Mark under Section 3.2 or the Test License under Section 3.1, and, if the latter two, the termination shall be fully effective as of the date of such termination as to any and all licenses granted in this CTLA to Licensee in connection with the Certification Mark and/or test license. All other applicable provisions of this CTLA shall remain in full force and effect.

13.2.4 Other Termination Rights. OIC shall have the right to terminate this CTLA, upon delivery of at least ten (10) days written notice to Licensee, in the event of any of the following events:

13.2.4.1 any insolvency, inability of the Licensee to meet its debts and obligations to creditors when due and payable, or the lack of any agreement or arrangement by Licensee with creditors for the payment of its debts and obligations. With respect to Section 365(n) of the US Bankruptcy Code and the rights and licenses under this CTLA, Licensee agrees that this CTLA and the rights and licenses described hereunder (to the extent they are within the scope of Section 365(n)), shall terminate and Licensee waives any rights it may have with respect to any election or right to continue any such rights and licenses under this CTLA;

13.2.4.2 the commencement of any proceedings to appoint any trustee or receiver over the assets or business of Licensee;

13.2.4.3 the commencement of any proceeding to place a lien upon any or all of the assets of the Licensee, or the placement of any lien upon any or all of such assets, where such lien is not removed within ten calendar days after the placement thereof;

13.2.4.4 any indefinite discontinuation of business or use of the Certification Mark by Licensee, or any cessation of business or liquidation or dissolution of the Licensee;

13.2.4.5 OIC determines that use of the Certification Mark, continuation of the UPnP Device Certification Process, in accordance with the terms of this CTLA, may violate any applicable laws or regulation and subject Licensee or OIC to any third party claims, legal proceedings or liability.

### 13.3 Termination By Either Party.

13.3.1 Termination for Breach. Either party may suspend performance and/or terminate this CTLA immediately upon written notice at any time if the other party is in material breach of any representation, warranty, term, condition or covenant set forth in this CTLA and fails to cure that breach within thirty (30) days after written notice thereof. Any notice of default hereunder shall be prominently labeled “NOTICE OF DEFAULT,” specifying the breach or default and specifying intent to terminate this CTLA if such breach or default has not been cured by the expiration or termination of said thirty (30) days or further specified period. If such default or breach is cured within such thirty (30) days or further specified period, such notice shall expire and have no further force or effect, and this CTLA shall continue in full force and effect and continue to be binding. If such default or breach is not cured within such thirty (30) days or further specified period contained in the notice, this CTLA shall expire and terminate at the end of such thirty days or further specified period. The rights and remedies provided in this section shall not be exclusive.

13.3.2 Termination with Notice. Notwithstanding the foregoing, or anything in this CTLA to the contrary, OIC or Licensee may terminate the rights and licenses granted pursuant to this CTLA without cause upon not less than thirty (30) days prior written notice to the other party to this CTLA.

### 13.4 Effect On Affiliate.

13.4.1 Affiliate as Licensee. If a Licensee’s License terminates but an Affiliate of the Licensee holds its own direct License, the Affiliate’s License rights are not affected.

13.4.2 Affiliate Application for Licenseeship. If a Licensee’s License terminates and an Affiliate of Licensee does not hold separate and direct License, all the rights under this CTLA of any such Affiliate shall terminate simultaneously with the Licensee’s, unless the Affiliate executes this CTLA within thirty (30) days of the last day of the Licensee’s License rights, in which event the rights of that Affiliate under its direct CTLA in OIC shall be deemed to be retroactive to the date of the Licensee’s termination date.

### 13.5 Events Upon Termination.

13.5.1 Licensee’s License Obligations. Termination shall not affect the Licensee’s obligations, if any, to offer appropriate licenses in and to the Test to OIC and/or its Licensees under applicable OIC procedures.

13.5.2 Return of Materials. Upon termination or expiration of this CTLA as provided in this Section 13, Licensee shall return to OIC or destroy within ten (10) days following the effective date of such termination or expiration all drawings, blueprints, notes, memoranda, specifications, designs, devices, documents and any other materials in Licensee’s possession or under Licensee’s control pertaining to the Test and any Updates, as well as all copies of the Test and any Updates. Licensee shall take all necessary steps to ensure that Licensee, its employees and its independent contractors do not retain electronic copies of such materials. Licensee shall provide a declaration signed by an officer of Licensee attesting that all

copies of such materials (including portions or derivative works thereof) have been returned to OIC and/or destroyed.

13.5.3 Discontinuation Of Use Of Certification Mark. Upon any expiration or termination of this CTLA and the rights granted hereunder to Licensee, Licensee shall, at its cost and expense, promptly cease all use of the Certification Mark and remove the Certification Mark from all devices and materials, including, but not limited, to Certified Devices and Marketing Materials and confirm to OIC that all use of the Certification Mark has ceased. The time frame allowed for removal or cessation of the use of this mark will be determined by OIC at that time.

13.5.4 Licensee's Rights As Affiliate. If OIC has terminated this CTLA under any provision of this Section 13 other than Section 13.1 or Section 13.2.2, any rights Licensee has or ever shall have as an Affiliate of another Licensee shall terminate as of the date of the termination of this CTLA by OIC.

13.5.5 Fees. In no event shall Licensee be entitled to a refund of any fees or dues paid under this CTLA.

#### 13.6 Survival.

Without limiting the foregoing, the following Sections shall survive any termination or expiration of this CTLA: Sections 2.4.5, 6, 7, 8, 10, 11, 12, 13.4, 13.5, 13.6, 14 and 15.

### **14. DISPUTE RESOLUTION & OTHER PROCEEDINGS**

#### 14.1 Alternate Dispute Resolution Between The Parties.

Any and all disputes, differences, claims or controversies, arising out of or relating to this CTLA or the subject matter hereof shall be finally settled, exclusively, by the following process:

14.1.1 Method of Resolution. The parties shall attempt to resolve any and all disputes amicably and in good faith without resort to formal process (as described below) by discussions escalating within their respective management organizations. In the event the same has not been resolved between the parties' management amicably within thirty (30) days, any party shall have the right to demand the same be resolved by mediation under the International Chamber of Commerce alternative dispute resolution rules, i.e., the ICC ADR Rules. Any such mediation will be treated as a settlement discussion and therefore will be confidential. The mediator may not testify for either party in any later proceeding relating to the dispute. If neither party demands mediation, or if mediation fails to resolve the dispute within thirty (30) days of its commencement, any and all disputes shall be resolved by binding arbitration under the Rules of Arbitration of the International Chamber of Commerce by an impartial neutral arbitrator acceptable to the parties to such Claim. Such party shall in such notice and demand specify the nature and scope of the dispute. If the parties are unable to agree on an arbitrator within thirty days after delivery and receipt of notice and demand for arbitration, a neutral and impartial arbitrator shall be selected and appointed by the International Chamber of Commerce in accordance with its rules. All aspects of the arbitration shall be treated as confidential. Neither the parties nor the arbitrators may disclose the existence, content or results of the arbitration, except as necessary to comply with legal or regulatory requirements. Before making any such

disclosure, a party shall give written notice to all other parties and shall afford such parties a reasonable opportunity to protect their interests. The proceedings shall be in English, and either party may require that a transcript be kept of the proceedings. Arbitration proceedings shall be conducted at a location mutually agreeable to the parties, and if the parties fail to agree within thirty days after the giving and receipt of notice and demand for arbitration, the International Chamber of Commerce shall determine the city. The parties agree to make every reasonable effort to: expedite and conclude such proceedings as quickly as is reasonably possible, conduct discovery and limit the taking of testimony and presentation of evidence in such manner as to control the costs and expenses of such proceedings.

14.1.2 Award. The arbitrator may not award any indirect, incidental, consequential, special punitive or exemplary damages against OIC. Pending the final decision of the arbitrator, any party may seek and obtain interim relief to preserve the status quo and prevent irreparable damage, injury and losses, including injunctive relief. The arbitrator may award attorneys' fees and costs to the prevailing party. The decision and awards of the arbitrator shall be binding upon the parties and enforceable by any court having proper jurisdiction.

#### 14.2 Other Disputes or Proceedings.

14.2.1 Notice of Claims. In the event of any claims, disputes or proceedings between Licensee and any third parties or any governmental authority relating to the Test, Certification Mark or Marketing Materials, Licensee agrees to promptly notify OIC, and thereafter keep OIC informed of the status of such claims, disputes or proceedings on a timely basis. Licensee agrees upon request of OIC, to provide OIC with such information as Licensee may have regarding such claim, dispute or proceeding.

14.2.2 Control. OIC shall have absolute determination and control in its discretion over any and all Claims and over any other litigation, claims or proceedings brought or which are not brought by OIC against third parties, or brought by third parties against OIC, which pertain to or affect the Certification Mark, UPnP Device Certification Process: or rules on Marketing Materials.

14.2.3 Rights of Action, Etc. Any and all rights of action, and proceeds, awards and recoveries (including interest and penalties) obtained against third parties arising out of or resulting from any claims or proceedings, against third parties with respect to the unauthorized use, or manner of use, of the Certification Mark, or any default or breach with respect to the Certification Mark, UPnP Device Certification Process, shall in their entirety belong to and be the property of OIC; Licensee shall have no rights or interest therein and in furtherance thereof assigns and transfers to OIC any and all right, title or interest which Licensee may have at any time therein.

#### 14.3 Injunction; Equitable Relief.

Licensee acknowledges that the threatened or actual breach by Licensee of the terms set forth in this CTLA may result in immediate and irreparable harm to OIC and/or OIC Test Authors for which there is no adequate remedy at law, and in such event, notwithstanding Section 14.1 above, OIC and/or OIC Test Authors shall be entitled to injunctive relief to prohibit

such unauthorized use of the Certification Mark, a Test and/or any Input, without the necessity of posting bond or other security, and to such other equitable relief as may be deemed proper by a court of competent jurisdiction. Such relief shall be in addition to any other relief to which OIC and/or OIC Test Authors may be entitled at law, in equity; or pursuant to this CTLA. The parties to this CTLA agree that any injunctive relief afforded by a court of competent jurisdiction shall be binding worldwide on the parties to this CTLA and specifically enforceable worldwide by a party to this CTLA against the other party to this CTLA (including, without limitation, the Affiliate of Licensee to this CTLA).

#### 14.4 Foreign Law.

If it is determined by a court or other governmental body of competent jurisdiction that one or more provisions of this CTLA are unenforceable according to their plain meaning in the English language and under the governing law set forth in Section 14.4, OIC retains the right to declare this CTLA null and void from the date at which such a determination would become effective as applied to the interpretation of this CTLA and, upon such a declaration, this CTLA shall be deemed either (i) terminated if such date is after the Effective Date, or (ii) null and void *ab initio* if such date is on the Effective Date.

### 15. MISCELLANEOUS

#### 15.1 Independent Contractors.

Licensee and OIC are independent contractors. Licensee is not authorized to and shall not engage in any conduct or make any representation that Licensee is acting on behalf of OIC with respect to the Certification Mark, Certified Device or any other device or service, UPnP Device Certification Process and UPnP Standards. Each party in performance of the obligations set forth in this CTLA is acting as an independent contractor to the other party and has no authority to act on behalf of the other party except as expressly provided in this CTLA. Licensee shall not engage in any acts or use of the Certification Mark or Marketing Materials which may result in liability or obligations on the part of OIC with respect to any devices related to Licensee. No partnership, joint venture, employment, agency or other form of agreement or relationship is intended.

#### 15.2 No Waiver.

No waiver of any breach of any provision of this CTLA will constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provision hereof. No waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.

#### 15.3 Modification of CTLA.

OIC may modify or amend Licenseeship rights and obligations in accordance with OIC Bylaws. Each Licensee shall be deemed to have accepted such modification or amendment by continuing to utilize the benefits of OIC Licenseeship, including, but not limited to, accessing the Licensee-only portions of OIC website and making use of any license of intellectual property granted in connection with OIC Licenseeship. Except as expressly provided in this Section 15.3

or other provisions of this CTLA (in particular, regarding amendment of documents incorporated herein by reference), this CTLA shall not be modified except by a written agreement dated subsequent to the Effective Date and Signed on behalf of OIC and Licensee by their respective duly authorized representatives.

#### 15.4 No Rule of Strict Construction.

This CTLA will be interpreted fairly as drafted and without any strict construction in favor of or against either party.

#### 15.5 Conflicts.

If there is a conflict between the terms of this CTLA and the terms of any Exhibit or document referenced herein, the following order of governance shall apply: (1) OIC Membership Agreement (2) OIC Articles of Incorporation and OIC Bylaws; (3) Sections 1 through 15 of this CTLA; (4) the UPnP Device Certification Process; (5) the UPnP Logo Usage Guidelines; and (6) any other document or Exhibit incorporated by reference in this CTLA.

#### 15.6 Compliance with Laws.

Notwithstanding anything contained in this CTLA to the contrary, the obligations of the parties hereto shall be subject to all laws, present and future, of any government having jurisdiction over the particularly affected parties and/or the particularly affected subject matter, and to orders, regulations, directions or requests of any such government.

#### 15.7 U.S. Government Restricted Rights.

All software devices provided to the U.S. Government pursuant to solicitations issued on or after December 1, 1995 are provided with the commercial rights and restrictions described elsewhere herein. All software devices provided to the U.S. Government pursuant to solicitations issued prior to December 1, 1995 are provided with RESTRICTED RIGHTS as provided for in FAR, 48 CFR 52.227-14 (JUNE 1987) or DFAR, 48 CFR 252.227-7013 (OCT 1988), as applicable and as amended.

#### 15.8 Export Restrictions.

Licensee acknowledges that the Test and any Updates are of U.S. origin. Licensee agrees to comply with all applicable international and national laws that apply to the Test and/or Updates, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by the government of the United States and/or other sovereigns.

#### 15.9 Taxes.

Licensee shall be responsible for any foreign, U.S. federal, state, local, municipal or other governmental taxes, duties, levies, fees, excises; or tariffs (collectively, “**Taxes**”), arising as a result of or in connection with the transactions contemplated under this CTLA, excluding Taxes applicable to OIC’s net income. Licensee shall indemnify, defend and hold harmless OIC from

any Taxes or claims, causes of action, costs (including, without limitation, reasonable attorneys' fees) and any other liabilities of any nature whatsoever related to any such Taxes.

#### 15.10 Assignment.

15.10.1 No Assignment By Licensee. The rights and obligations of Licensee under this CTLA are personal and, except as expressly provided in this CTLA, shall not be assigned, sublicensed or otherwise transferred in whole or in part without the prior written consent of OIC, which may be granted or withheld in OIC's sole discretion. Any attempted assignment, sublicense or transfer in contravention of this CTLA shall be null and void and of no force and effect. Except as expressly permitted pursuant to this CTLA, Licensee shall not permit any third party (including without limitation consultants and independent contractors) to exercise any rights under this CTLA.

15.10.2 Effect of Divestiture, Merger or Acquisition. In the event that an Affiliate ceases to be an Affiliate of a Licensee, such as by divestiture, then such former Affiliate, in order to retain any rights of Licenseeship in OIC, shall be required to sign up as a OIC Licensee and thereafter execute this CTLA. In the event a Licensee is acquired or merged into another, non-Affiliated company ("**New Company**"), then New Company shall be entitled to continue as an OIC Licensee, provided New Company assumes all the rights and obligations of such OIC Licensee under this CTLA and any related agreements that such OIC Licensee had executed with respect to OIC.

15.10.3 Assignment by OIC. OIC may assign or transfer any or all of its rights and obligations under this CTLA, at any time, upon delivery of written notice to the Licensee. OIC may assign or transfer any or all of its right, title or interest in the Test, the Certification Mark and the UPnP Device Certification Process at any time, in whole or in part, without the prior written consent or any notice to the Licensee. Any such transfer of rights or obligations may, in OIC's sole discretion, be effected by novation, such that thereafter the parties to this CTLA will be such assignee (as "OIC") and Licensee. If OIC so requests, Licensee shall execute any and all documentation necessary to effect such novation.

15.10.4 Successors. Except as otherwise provided herein, this CTLA shall be binding upon and inure to the benefit of each party's respective successors and lawful assigns.

#### 15.11 Severability.

Should a court of competent jurisdiction find any provision of this CTLA, or portion thereof, to be unenforceable, that provision will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this CTLA will continue in full force and effect.

#### 15.12 Expenses.

Each party will be responsible for covering its respective costs in performing its duties under this CTLA, except to the extent expressly set forth in this CTLA.



15.13 Captions.

All captions in this CTLA are intended solely for the convenience of the parties, and none shall affect the meaning or construction of any provision.

15.14 Third Party Beneficiary.

Licensee acknowledges and agrees that OIC Test Authors are each third party beneficiaries of this CTLA, with the right to enforce such suppliers' rights in the Test and Updates, if any, directly against Licensee.

15.15 No Franchise.

Licensee acknowledges that OIC, by entering into this CTLA, is not selling or granting to Licensee (or any applicable Affiliate) a franchise pursuant to any federal or state laws, codes or regulations.

15.16 Notices.

Any and all notices provided for in this CTLA, or given pursuant to this CTLA, shall be deemed duly given, if in writing and given as follows: (a) by delivery in hand, (b) sent by registered first class airmail, postage prepaid, (c) sent by overnight international courier against a signed receipt for delivery on the following business day, all charges for delivery prepaid, to the addressee. Notice may be sent by telecopier or telefax, rapidfax or other electronic transmission such as email. Each of the parties hereby designates the following addresses for purposes of giving of such notices:

If to OIC:                      Open Interconnect Consortium, Inc.  
   Attention: Executive Director  
   c/o VTM, Inc.  
   3855 SW 153rd Drive  
   Beaverton, OR 97003  
   USA  
   (503) 619-0673 Phone  
   (503) 644-6708 Fax  
   [Email: admin@openinterconnect.org](mailto:admin@openinterconnect.org)

If to Licensee:                To the representative and address set forth in the applicable  
   OIC Membership Agreement or Non-Member CTLA  
   Application.

The foregoing address(es) may be changed by a party upon written notice given to the other party, in the same manner as provided above.

15.17 Complete Agreement.

Except as otherwise expressly set forth herein, this CTLA, shall cumulatively constitute the entire agreement of the parties, superseding all prior agreements and understandings as to the subject matter herein. Notwithstanding any course of dealings of the parties at any time, no other document shall be construed to modify any of the terms of this CTLA, unless the document is (i) signed by OIC and Licensee, and (ii) expressly refers to all provisions of this CTLA that the parties intend to modify by such document. This CTLA may be executed in two or more counterparts, each of which shall be deemed an original but which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, authorized representatives of the parties have executed this document on the dates indicated below.

LICENSEE: \_\_\_\_\_

By (signature): \_\_\_\_\_

Name (print): \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

OIC: Open Interconnect Consortium, Inc.

By (signature): \_\_\_\_\_

Name (print): \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**  
**UPNP LICENSEESHIP APPLICATION FORM**

Download this application from:

[www.openinterconnect.org](http://www.openinterconnect.org)

**EXHIBIT B**

**UPNP CERTIFICATION MARKS**

**LOGO MARKS:**



**WORD MARKS:**

UPNP®

UPNP+™