



This License Agreement (the “License Agreement”), by and between the Open Mobile Video Coalition (the “OMVC”) and the customer named on the signature page attached hereto (the “Customer”), sets forth the terms and conditions pursuant to which the OMVC grants to Customer a limited right and license to use a database of more than 290 prerecorded radio frequency captures, each of which is approximately one minute and twenty seconds in duration, including an M/H signal and the 8-VSB on RF channel 24 (the “RF Catalog”) intended for use by Customer to test and confirm the quality of signal service received by customer devices prior to commercial use. Capitalized terms shall have the meanings ascribed to herein.

1. *Term of License Agreement.* This License Agreement and the terms and conditions set forth herein will become effective and binding on the parties as of the date signed by the parties hereto or upon delivery of the RF Catalog by the OMVC to the Customer. By accepting and using the RF Catalog, Customer agrees to be bound by the terms of this License Agreement.

2. *License to Use RF Catalog.* The OMVC hereby grants to Customer, and Customer hereby accepts from the OMVC, pursuant to the terms and subject to the conditions hereof, the non-exclusive, non-transferable, non-sublicensable, limited purpose right and license to use the RF Catalog solely in connection with the testing of signal quality in a laboratory environment determine signal performance differences and other quality issues in customer equipment.

3. *Limitations of License.* All rights and licenses not specifically granted to Customer under this License Agreement are reserved to the OMVC for the OMVC’s sole and exclusive use, disposition and exploitation. Without limiting the generality of the foregoing, Customer shall not use the RF Catalog for any commercial or any other purpose other than testing, shall not copy any portion of the RF Catalog, shall not retain any portion of the RF Catalog beyond the use period, and will not authorize or permit any third party to use the RF Catalog for any purpose.

4. *Use Period.* Customer shall be entitled to use the RF Catalog for a period of fourteen (14) days beginning on the date of delivery of the RF Catalog to Customer (the “Use Period”), unless the parties otherwise mutually agree to extend the Use Period. The OMVC will determine, in its sole but reasonable discretion and in consultation with Customer, the first day of the Use Period (based on scheduling of use of the RF Catalog by other customers and delivery schedules).

5. *Fee for Use.* In consideration for the rights granted pursuant to this License Agreement, Customer shall pay to OMVC a license fee in an amount to be mutually agreed by the parties and memorialized in writing in a statement of work (the “SOW”) which, upon execution of the SOW by the parties hereto, shall be deemed an amendment to this License Agreement and shall automatically be incorporated herein by reference, together with the costs of shipping the RF Catalog from OMVC to Customer (the “Fee”). The Fee shall cover Customer’s use of the RF Catalog to the extent the RF Catalog includes radio frequency captures from the Washington, D.C. and the Dallas/Houston, Texas markets, for the duration of the Use Period, regardless of whether Customer makes use of the RF Catalog during the full Use Period. To the extent the RF Catalog is expanded to include additional captures in additional markets, a separate and additional charge shall apply and will be negotiated in good faith by the OMVC and Customer. The OMVC will invoice Customer for the Fee, and the Fee shall be due and payable by Customer within thirty (30) days of the date of the invoice. Any Fee or portion thereof that is paid after such thirty (30) day period shall accrue interest at the rate of five percent (5%) per annum or the highest rate permitted by applicable law, compounded monthly, until such Fee is paid to the OMVC in full.

6. Ownership. Customer acknowledges that the RF Catalog is the sole property of the OMVC. Title to the RF Catalog shall remain with the OMVC at all times and Customer shall have no right, title or interest therein. Customer will not take any action to create or to permit the creation of a lien, claim, security interest or encumbrance on the RF Catalog or any portion thereof located on Customer's premises or utilized by Customer and will keep the RF Catalog located on Customer's premises or utilized by Customer free and clear from any and all liens, claims, security interests, encumbrances or legal processes of Customer's creditors. The OMVC shall have the right to repossess the RF Catalog at any time, with or without demand or further notice. Customer will not remove, obliterate, deface or otherwise obscure any identification labels, ownership markings, copyright notices or other similar identifiers on the RF Catalog.

7. Shipping and Return; Risk of Loss; Insurance.

(a) The OMVC shall deliver the RF Catalog to Customer at a single location specified in advance by customer. In the event that the RF Catalog is damaged prior to or during shipping to Customer, the OMVC shall have the option to either (i) repair or replace the RF Catalog at the OMVC's sole cost and expense or (ii) terminate the License Agreement with no further liability or obligation to Customer.

(b) Customer will not move the RF Catalog from its delivery location without the OMVC's prior written consent. On or before the expiration of the Use Period, Customer shall return the RF Catalog to the OMVC by personal delivery or by reputable overnight delivery service that maintains records of receipt for next business day delivery, at Customer's sole cost and expense.

(c) Customer shall bear the risk of damage or loss to the RF Catalog for any reason during the Use Period and prior to return delivery to the OMVC, and shall be responsible for the care and safekeeping of the RF Catalog. Customer shall return the RF Catalog to the OMVC in the same condition as it was received by Customer. In the event that the RF Catalog is damaged or destroyed during shipping or otherwise prior to return delivery to the OMVC, Customer shall repair or replace the RF Catalog at Customer's sole cost and expense. Customer shall carry and maintain insurance sufficient to cover any loss or damage of the RF Catalog for not less than the replacement value of the RF Catalog. At the OMVC's request, Customer shall present written evidence of such insurance.

8. Copyrightable Material. Customer acknowledges that, to the extent that any materials contained in the RF Catalog are protected by copyright, the OMVC is the sole copyright holder. Customer will not challenge, oppose or interfere with any of the OMVC's copyright claims in the RF Catalog or the materials contained therein.

9. Disclaimer of Warranty; Limitation of Liability.

(a) EXCEPT AS EXPRESSLY SET FORTH IN THIS LICENSE AGREEMENT, THE OMVC MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, NATURE OR DESCRIPTION, EXPRESS OR IMPLIED. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE OMVC DISCLAIMS ANY AND ALL OTHER WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, WHETHER ARISING BY A COURSE OF DEALING, USAGE OR TRADE PRACTICE OR COURSE OF PERFORMANCE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY THE OMVC OR ITS REPRESENTATIVES SHALL CREATE A WARRANTY OR IN ANY WAY

INCREASE THE SCOPE OF THE WARRANTIES SET FORTH IN THIS LICENSE AGREEMENT.

(b) THE OMVC SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE OR SPECIAL DAMAGES, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY, TORT OR OTHERWISE, INCLUDING NEGLIGENCE OF ANY KIND, WHETHER ACTIVE OR PASSIVE, AND REGARDLESS OF WHETHER THE POSSIBILITY THAT SUCH DAMAGES COULD RESULT WAS KNOWN.

(c) CUSTOMER’S SOLE AND EXCLUSIVE REMEDY AGAINST THE OMVC UNDER THIS LICENSE AGREEMENT IS EITHER (i) TERMINATION WITHOUT ANY FURTHER LIABILITY BY EITHER PARTY (EXCEPT THAT CUSTOMER SHALL REMAIN OBLIGATED TO PAY A PRO RATA PORTION OF THE FEE UNDER SECTION 5 AND THE PROVISIONS OF SECTIONS 6, 8, 10 AND THIS SECTION 9 SHALL CONTINUE TO GOVERN) OR (ii) THE PROVISIONS OF SECTION 7(a) HEREOF.

10. Indemnification. Customer shall indemnify and hold harmless the OMVC from and against any and all damages arising out of, connected with or related to any damage or loss to the RF Catalog during the period from delivery of the RF Catalog to Customer until the safe return of the RF Catalog to the OMVC, any use of the RF Catalog not expressly authorized by the License Agreement or any other failure to comply with any provision of this License Agreement.

11. No Assignment. Customer shall not assign or sublicense any of its obligations or the rights and licenses granted to it under this License Agreement, and any attempt to assign or sublicense such obligations, rights or licenses shall be deemed null and void.

12. Governing Law; Jurisdiction. This License Agreement shall be governed, construed and enforced in accordance with the laws of the District of Columbia. (without regard to the choice of law provisions thereof). The parties hereto consent to the jurisdiction of the local and federal courts in and for the District of Columbia.

13. Entire License Agreement; Amendments. This License Agreement (including the SOW) represents the entire understanding and License Agreement between the parties hereto with respect to the subject matter hereof. This License Agreement cannot be amended, supplemented, or changed except by an License Agreement in writing that is signed by the parties hereto.

14. Counterparts. This License Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. Each party will receive by electronic transmission a duplicate original of the License Agreement executed by each party, and each party agrees that the delivery of this License Agreement by electronic transmission will be deemed to be an original of the License Agreement so transmitted.

The OMVC:
THE OPEN MOBILE VIDEO COALITION

Customer:

By: _____
Name:
Title:
Date:

By: _____
Name:
Title:
Date: