

## CableLabs® OCAP Implementer License Agreement

THIS **OPENCABLE APPLICATION PLATFORM (OCAP) IMPLEMENTER LICENSE AGREEMENT** is made as of \_\_\_\_\_ (“**Effective Date**”), by and between Cable Television Laboratories, Inc. (“**CableLabs**”) a Delaware non-stock membership corporation with offices at 858 Coal Creek Circle, Louisville, Colorado 80027 USA, 303-661-9100; fax 303-661-9199, and the party identified below (“**Licensee**”).

Name of Licensee: _____	Licensee Contact: _____
Address: _____	Title: _____
City: _____ State: _____	Phone: _____
Postal Code: _____ Country: _____	Fax: _____
	E-Mail: _____

The CableLabs OpenCable Project was established to define next-generation digital cable consumer devices, encourage supplier competition, and create a retail platform. The OpenCable Project has developed certain hardware and software/middleware specifications, and related test materials, as further defined at [www.opencable.com/specifications](http://www.opencable.com/specifications), (collectively, the “**OpenCable Specifications**”). The OpenCable software specification for bidirectional 2-way devices is known as the OpenCable Application Platform specification (the “**OCAP Specification**” or “**OCAP**”). An OCAP implementation is required for all devices compliant with the Host 2.0 OpenCable Specifications.

CableLabs owns or has rights to license the OCAP Specification, an associated uniform conformation test suite for testing OCAP implementations (the “**OCAP Conformance Test Package**” or “**CTP**”), certain OCAP-related software code (the “**OCAP Licensed Code**”), and an Automated Test Environment test manager for running the OCAP Compliance Test Suites (the “**Automated Test Manager**” or “**ATE**”).

Subject to the terms of this Agreement, Licensee desires to obtain a license to the OCAP Specification, and the OCAP-related materials indicated below (collectively “**OCAP Licensed Materials**”).

<b>OCAP Licensed Materials [check all that apply]</b>	
<input checked="" type="checkbox"/>	OCAP Specification
<input type="checkbox"/>	OCAP Conformance Test Package (see <i>Annex A</i> )
<input type="checkbox"/>	OCAP Licensed Code (see <i>Annex B</i> )
<input type="checkbox"/>	OCAP Automated Test Environment (see <i>Annex C</i> )

For security purposes, various digital certificates are required for all Host 2.0 OpenCable devices. These digital certificates are licensed under the CableLabs Host 2.0 Digital Certificate Agreement. The Host 2.0 Digital Certificate Agreement is located at [www.opencable.com/documents](http://www.opencable.com/documents).

Depending on the features of the device manufactured license agreement for the use of other technology may be required to fully comply with the OpenCable Specifications. Such agreements may include, but not limited to agreements for required intellectual property from third parties. Notwithstanding such other agreements, the terms and conditions of this Agreement shall take precedence over any and all other terms and conditions in such other agreements with respect to bidirectional Host 2.0 OpenCable devices manufactured hereunder.

LICENSEE HAS READ AND AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT, INCLUDING THOSE TERMS CONTAINED ON THE FOLLOWING PAGES HEREOF. The parties have executed this Agreement and enter into this Agreement as of the Effective Date.

<b>CABLE TELEVISION LABORATORIES, INC.</b>	<b>LICENSEE:</b> _____
Signed: _____	Signed: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

## 1. DEFINITIONS

**1.1 “Affiliate”** means any entity that directly or indirectly owns or controls, is owned or controlled by, or under the common control of another entity, wherein the term “control” means voting control over greater than fifty percent (50%) of: (a) an entity’s common shares; or (b) the total number of board members sitting on the entity’s board of directors.

**1.2 “Cable Operator”** means any cable operator that CableLabs identifies on its website <www.cablelabs.com> as a member, and any other cable operator that provides CableCARDS to customers in connection with the provision of cable services in North America.

**1.3 “Cable Resources”** means the devices and/or interfaces that access the cable system, including, QAM and QPSK tuners, the DOCSIS Secure Gateway (DSG) resource, the CableCARD interface, and such other cable resources as identified in the OCAP Specification, as amended from time to time.

**1.4 “Certified OpenCable Device”** means a Host Device that has obtained Certification (as those terms are defined in the CableCARD-Host Interface License Agreement (“CHILA”)).

**1.5 “Content Providers”** means any video programming providers that provide copyrighted works for transmission to Certified OpenCable Devices and the copyright owners of such work.

**1.6 “Compliant Implementation”** means an Implementation that (a) implements all of the required interfaces, functionality and requirements of the Issued OCAP Specification, including, for the avoidance of doubt, only accessing the Cable Resources via OCAP Applications, or applications with an OCAP front end (as defined in the OCAP Specification); (b) does not modify, superset, subset, or extend the OpenCable Name Space, or include additional packages, classes, or methods in the OpenCable Name Space, and (c) resides on a Certified OpenCable Device for use in North America.

**1.7 “Draft”** means, with respect to versions of the various OpenCable Specifications or OCAP Specification, a document that is specifically identified by CableLabs as a “Work in Progress” or “Draft” version. Draft specifications are only made available by CableLabs for review and comment by Participants that have signed an *OpenCable Confidential Information Access Agreement* in substantially the same form as the agreement found at [www.opencable.com](http://www.opencable.com). Draft specifications specifically exclude Issued specifications. Each Draft specification shall be considered an OpenCable Specification or OCAP Specification, as appropriate.

**1.8 “Host Profile”** means a device designated as one of the variations of a Certified Host Device in the Core Functional Requirements of the OpenCable Specifications, and including such other Host Profiles as CableLabs may include in the OpenCable Specifications from time to time.

**1.9 “Implementation”** means an implementation of an Issued OCAP Specification developed by, for, or under authorization of Licensee. For the purposes of this Agreement, Implementation includes Incomplete Implementations, Compliant Implementations, and other products, services, or software made by or for Vendors.

**1.10 “Incomplete Implementation”** means an Implementation that implements less than all of the required interfaces, functionality, and requirements of the applicable Issued OCAP Specification.

**1.11 “Intellectual Property Rights” or “IPR”** means all intellectual property rights owned or licensable without restriction or obligation to pay a royalty to a licensor, worldwide, arising under

statutory law, common law or by contract, and whether or not perfected, including, without limitation, all (a) patents, patent applications and patent rights, (b) rights associated with works of authorship including copyrights, copyright applications, copyright registrations, mask work rights, mask work applications, mask work registrations, and derivative works of the foregoing, (c) rights relating to the protection of trade secrets and confidential information, and (d) divisions, continuations, continuations in part, renewals, reissues and extensions of the foregoing (as and to the extent applicable) now existing, hereafter filed, issued or acquired, but not including trademarks, trade dress, trade name, design patent and service mark rights, whether or not registered.

**1.12 “Issued” or “Issued Specifications”** means, with respect to versions of the various OpenCable Specifications or the OCAP Specification, that is identified by CableLabs as a current issued version. Upon becoming an Issued specification, the specification is no longer considered a Draft specification; that is, Issued specifications shall not include draft versions of specifications released from time to time by CableLabs.

**1.13 “OCAP Automated Test Environment” (or “ATE”)** means the software and related documentation provided by CableLabs (and updated by CableLabs from time to time) to assist Licensee in running the tests in the OCAP Conformance Test Package, as more fully described in *Annex C*. The ATE does NOT include any hardware or other software that may be required to run the ATE. The ATE is licensed under the terms of *Annex C*.

**1.14 “OCAP Conformance Test Package” (or “CTP”)** means the tests identified by CableLabs, and updated from time to time by CableLabs, that are used to show conformance to the OCAP Specification. The CTP is licensed under the terms of *Annex A*.

**1.15 “OCAP Full Implementer”** means a legal entity that has: (a) entered into an OCAP Implementer License Agreement with CableLabs, and (b) confirmed in writing to CableLabs, and any Vendor(s) supplying Incomplete Implementations to such entity, both that such entity has entered into an OCAP Implementer License Agreement with CableLabs, and that any license granted by such Vendor(s) with respect to such Incomplete Implementations supplied to such entity is expressly limited in its scope to integration into and distribution as part of a Compliant Implementation by the OCAP Full Implementer.

**1.16 “OCAP Implementer License Agreement”** means an agreement substantially similar to this Agreement.

**1.17 “OCAP Licensed Code”** means certain computer software programs and code indicated by Licensee in *Annex B*, in the format indicated therein, and any updates to such code by CableLabs from time to time.

**1.18 “OCAP Specification”** means a version of an OCAP Specification that is or has at one time been identified by CableLabs as a current Issued version of the OCAP Specification that CableLabs will Certify an Implementation against. *Issued versions of the OCAP Specification are available at [www.opencable.com/specifications](http://www.opencable.com/specifications).*

**1.19 “OpenCable Name Space”** means designations for class, package, or interface names or declarations contained in or referred to by the Issued OCAP Specification which appear to originate from CableLabs or its licensors, such as package or class names which begin with org.ocap, java, javax, sun.com, org.davic, org.dvb, org.havi, or their equivalents in any subsequent class, interface, and/or package naming convention reasonably adopted by CableLabs, or its licensors.

**1.20** “**Third Party Beneficiary**” means any Content Provider or Cable Operator.

**1.21** “**Vendor(s)**” means any individual, company, or other entity that: (a) wishes to implement or has implemented the Issued OCAP Specification; or (b) engages in activities relating to the design, development, use, manufacture, reproduction, sale, distribution or support of specific applications, hardware, or software products which implement all or part of the Issued OCAP Specification in an Implementation.

## **2. GRANT OF LICENSES**

**2.1 OCAP Specification.** Subject to and conditioned upon Licensee’s compliance with the terms of this Agreement, CableLabs grants to Licensee a limited, worldwide, non-exclusive, perpetual (unless this Agreement is terminated pursuant to Section 56), non-transferable (except as permitted in Section 11.3), royalty-free right and license under the Intellectual Property Rights owned or licensable by CableLabs solely to:

(a) view and download the Issued OCAP Specification from URL location(s) as may be designated by CableLabs;

(b) use, reproduce, and distribute the Issued OCAP Specification for the purpose of making Compliant Implementations (without extending or superseding the OpenCable Name Space), and further to use, make, reproduce, sell, distribute, import or transmit such Compliant Implementations incorporated into Certified OpenCable Devices; and

(c) to use, reproduce, and distribute the Issued OCAP Specification for the purpose of making Incomplete Implementations that are intended for delivery to an OpenCable Full Implementer; and to sell, import, transmit or otherwise distribute such Incomplete Implementations, but only to an OCAP Full Implementer for subsequent integration and sale, importation, transmission, or distribution as part of a Compliant Implementation. Licensee may not authorize an OCAP Full Implementer to distribute Licensee’s Incomplete Implementation unless it is integrated into and distributed as part of a Compliant Implementation. No license is granted hereunder with respect to Incomplete Implementations for any other purpose.

**2.2 OCAP Conformance Test Package.** Subject to execution of *Annex A*, Licensee shall receive a limited license to the OCAP Conformance Test Package, as set forth in *Annex A*.

**2.3 OCAP Licensed Code.** Subject to execution of *Annex B*, Licensee shall receive a limited license to the OCAP Licensed Code, as set forth in *Annex B*.

**2.4 OCAP Automated Test Environment.** Subject to execution of *Annex C*, Licensee shall receive a limited license to the OCAP Automated Test Environment, as set forth in *Annex C*.

**2.5 Have Made Rights.** Licensee shall have the right under licenses granted under Sections 2.1-2.5 and Annexes A-D to have third parties (“Have Made Parties”) make (including for the avoidance of doubt, design) Implementations, Licensed Products, Licensed Components or Test Tools (as each of those terms are defined in the CHILA), or subparts thereof for the sole account of Licensee, provided that with respect to Implementations, Licensed Products, Licensed Components or Test Tools, or subparts thereof they (a) are to be sold, used, leased, or otherwise disposed of, by or for Licensee under the trademark, tradename, or other commercial indicia of Licensee or an entity to which Licensee is

authorized hereunder or, with respect to Licensed Components and Test Tools, under CHILA to sell such Implementations, Licensed Products, Licensed Components, or Test Tools and (b) are made by such Have Made Parties using designs or specifications supplied by or for Licensee. Licensee shall be fully responsible for such Have Made Parties' compliance with all terms of this Agreement as if Licensee itself were performing such manufacture. Have Made Parties must be (i) OCAP Licensed Materials licensees, (ii) Affiliates of Licensee, or (iii) bound in writing to an applicable non-disclosure agreement with Licensee on terms that are no less stringent than the terms set forth in Section 7 of the CHILA. Licensee agrees and acknowledges that the fact that it has contracted with a Have Made Party shall not relieve Licensee of any of its obligations under this Agreement. Other than on behalf of Licensee, and under the foregoing terms, Have Made Parties shall receive no license, sublicense, or implied license with respect to the OCAP Licensed Materials or any copyrights in the OCAP Specifications.

**2.6 Limitation on All Licenses.** CableLabs and/or its licensors reserve all rights in and to the OCAP Licensed Materials not expressly granted to Licensee in this Agreement and all applicable Annexes hereto. There are no implied licenses under this Agreement, and any rights not expressly granted to Licensee hereunder are reserved by CableLabs and its licensors. In addition, notwithstanding anything to the contrary herein, if, at any time during the term of this Agreement, CableLabs' rights to grant the licenses or rights in this Section 2 that are licensed from third parties, or under any applicable Annex hereto, are terminated, limited or expanded, the license and rights granted to Licensee hereunder will be terminated, limited or expanded to the extent of such termination, limitation or expansion of CableLabs' rights. Licensee shall retain whatever rights it retains under the agreements with the third parties and shall have the right to make whatever elections it may make under those agreements (such as the right to designate a successor entity to CableLabs, if appropriate).

**2.7 Flexible Implementations.** Nothing in this Agreement shall preclude Licensee from including in a Certified OpenCable Device additional features or functionalities not specified in the OCAP Specifications so long as such additional features are conformant with Section 3.1(c) below. Such devices may include, but are not limited to, Certified OpenCable Devices with an integrated recording device that otherwise meet the requirements of this Agreement and the CHILA. It is further understood and agreed that nothing in this Agreement shall affect any other products manufactured by Licensee not under this Agreement, other than Certified OpenCable Devices, and that this Agreement shall in no way impose any limit on the types of devices that may be manufactured by Licensee. It is further understood and agreed that a Licensee may enter into an agreement with an individual Cable Operator under which the Licensee's Host Device (as defined in the CHILA) renders services provided by that Cable Operator to cable customers served from that Cable Operator's cable system in a mutually agreed upon manner as between Licensee and such Cable Operator. All other Host Devices shall comply with this Agreement.

### **3. WARRANTIES**

**3.1** Licensee represents, warrants, and covenants that each Certified OpenCable Device shall:

(a) include a Compliant Implementation, and shall be compliant with the applicable OpenCable Specifications;

(b) consistent with the technical capabilities of the device, display applications in the manner that the OpenCable Specifications direct that such applications should be displayed;

(c) include no feature or functionality that (i) technically disrupts, impedes or impairs the delivery of services to any cable customer, including, but not limited to, for clarification purposes and subject to Section 2.8 above, delivering all services provided by the Cable Operator to the Certified OpenCable Device in the same manner that such services are delivered by equivalent Cable

Operator devices to the cable customer (except where such disruption, impediment, or impairment is a necessary consequence of complying with the OpenCable Specifications, and there is no alternative compliant implementation); (ii) causes physical harm to the cable network or the CableCARD; (iii) facilitates theft of service or otherwise interferes with reasonable actions taken by Cable Operators to prevent theft of service; (iv) jeopardizes the security of any services offered over the cable system; or (v) interferes with or disables the ability of a Cable Operator to communicate with or disable a CableCARD or to disable services being transmitted through a CableCARD;

(d) include an OCAP code verification certificate, if, and only if, the OCAP Implementation in the Certified OpenCable Device is a Compliant Implementation.

**3.2** CableLabs represents, warrants and covenants that:

(a) it has the right to enter into this Agreement;

(b) without investigation, it is not aware of any notice or claim, threatened or pending, that the use of the OCAP Licensed Materials in accordance with the terms of this Agreement infringes any third party's Intellectual Property rights, except as identified by CableLabs to Licensee;

(c) CableLabs has authorized the person who has signed this Agreement for CableLabs to execute and deliver this Agreement to Licensee on behalf of CableLabs; and

(d) this Agreement constitutes a valid and binding obligation of CableLabs, enforceable according to its terms.

**3.3 Disclaimer of Warranties.** OTHER THAN AS SET FORTH IN SECTION 3.2, THE OCAP LICENSED MATERIALS 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 BY CABLELABS. Licensee acknowledges that the OCAP Licensed Materials may contain materials, including normative and other references, not owned or controlled by CableLabs, or made available by CableLabs under this Agreement. Licensee understands that implementation of the Issued OCAP Specification may necessitate implementation or use of such materials, including normative references. Licensee further acknowledges that it may be required to enter into agreements with parties holding intellectual property rights related to such materials, and that such agreements may include obligations in addition to those contained herein, including, without limitation, a duty to pay royalties to such parties, full compliance with the OCAP Specification, and/or a reciprocal grant of essential IPRs. CableLabs shall inform Licensee of all such parties holding intellectual property rights to such materials of which CableLabs is aware.

**4. OPENCABLE IPR POLICY.** Licensee, on behalf of itself and its Affiliates, hereby agrees to be bound by the terms and conditions of the OpenCable IPR Policy, attached hereto and incorporated herein as *Exhibit 1* ("OpenCable IPR Policy").

**5. INFRINGEMENT.**

**5.1 Cooperation in Defense.** If CableLabs on the one hand and/or Licensee on the other hand (each, a "Defendant"), should be sued on a single claim or related claims that implementation of the OCAP Specifications in a Certified OpenCable Device necessarily infringes the patent or other rights of

another party, (a “**Suit**”), then the Defendants shall provide reasonable information and cooperation relating to their Suits, and CableLabs shall (subject to advice of litigation counsel) permit participation in the suit by a Licensee that is not a Defendant at its own expense. Further, CableLabs and Licensee shall endeavor to negotiate in good faith a joint defense agreement whereby common claims against all Defendants may be defended in a coordinated and efficient manner.

**5.2 Substitution in the Event of a Claim of Infringement.** If CableLabs on the one hand or Licensee on the other hand receives notice that the OCAP Licensed Materials allegedly infringe Intellectual Property Rights of a third party, then CableLabs may, at its sole option and expense, obtain for Licensee the right to use the materials that are substantially equivalent to the OCAP Licensed Materials, and does not infringe such patent.

## **6. TERM AND TERMINATION**

**6.1 Term.** The term of this Agreement shall commence on the Effective Date and shall continue indefinitely, unless terminated earlier by mutual consent of the parties or in accordance with this Section 6.

**6.2 Licensee Termination for Convenience.** Licensee shall have the right to terminate this Agreement at any time, for any reason or no reason, on thirty (30) days prior notice to CableLabs.

**6.3 CableLabs Termination for Material Breach.** CableLabs may terminate the license associated with a particular model of Certified OpenCable Device that includes an OCAP Implementation as to which Licensee has materially breached Section 2 or 3 (as those obligations applied at the time the device was licensed and/or Certified). Upon cure of such breach hereunder, Licensee may continue to manufacture such model under the terms of this Agreement. However, CableLabs may only terminate the licenses pursuant to this Section 6.3 after CableLabs has (a) evaluated the potential breach, (b) consulted with Licensee regarding the potential breach, (c) and thereafter given written notice to Licensee of CableLabs’ intent to terminate the license with respect to such model, and (d) provided Licensee with a reasonable opportunity to cure the breach (where such breach is capable of being cured) and such breach remains uncured for thirty (30) days following the date of such notice, or, if such breach cannot by its nature be cured within such period, and the breach does not subject cable content to an unreasonable risk of unauthorized access, copying, or distribution, and is not a breach of Sections 2 or 3 of this Agreement, then for a longer period as reasonably determined by CableLabs. Termination of the licenses granted for any specific model of Certified OpenCable Device shall not affect the licenses granted for any other model.

### **6.4 Obligations Upon Termination.**

**(a) No Use of OCAP Licensed Materials.** Upon the termination of the licenses granted hereunder for any specific model pursuant to Section 6.3, Licensee may no longer make, have made, use, sell, import or distribute such model, nor use the OCAP Licensed Materials therewith. Licenses properly granted by Licensee in conjunction with the sale or distribution of a Certified OpenCable Device by Licensee pursuant to Section 2.1 prior to the date of termination shall remain in full force and effect. Unless otherwise stated herein, no termination of this Agreement by Licensee, or termination of any license granted hereunder shall relieve either party of any obligation or liability accrued hereunder prior to such termination, or rescind or give rise to any right to rescind anything done by either party prior to the time such termination becomes effective nor shall the survival provisions of Section 6.4(b) be affected by such termination.

(b) **Survival.** Termination of this Agreement will not relieve either party from fulfilling its obligations that by their terms or nature survive termination, including, but not limited to Sections 1, 3, 5, 7, 8, 9 and 11, Section 3 of the OpenCable IPR Policy, Section 4 of Annex A, Section 4 of Annex B, and Section 4 of Annex C.

**7. INDEMNIFICATION.** Licensee and CableLabs will each defend, indemnify and hold harmless the other and the other's member companies, licensors, and contractors, including all officers, directors, employees or agents thereof (the "**Indemnitees**"), against any third party claims and suits ("**Claims**") that arise from or relate to any claim alleging facts that would constitute a material breach by Licensee or CableLabs of any of the terms, conditions, covenants, representations or warranties set forth in this Agreement (including, without limitation, the obligation not to use the OCAP Licensed Materials outside of the scope of the licenses granted herein). Licensee or CableLabs shall pay any and all losses, liabilities, damages, costs, fees, and expenses (including reasonable attorneys' fees) finally awarded against the other or its Indemnitees or paid in settlement of such Claims. The obligations of Licensee or CableLabs under this Section are conditioned on the other giving Licensee or CableLabs: (a) prompt written notice of any Claim for which indemnification is sought; (b) control of the defense and settlement of such Claim; and (c) reasonable assistance and cooperation in such defense, at Licensee's or CableLabs' expense.

**8. LIMITATION OF LIABILITY.** EXCEPT IN THE CASE OF A BREACH OF SECTIONS 2 OR 3, OR CLAIMS ARISING UNDER SECTION 7 OF THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, USE OF THE OCAP LICENSED MATERIALS OUTSIDE OF THE SCOPE OF THE LICENSE GRANTED HEREIN), IN NO EVENT SHALL ANY PARTY (INCLUDING CABLELABS, ITS LICENSORS, LICENSEE (AND THEIR AFFILIATES), ANY CABLELABS MEMBER, OR ANY OTHER VENDOR) BE LIABLE TO THE OTHER PARTY, OR ANY THIRD PARTY BENEFICIARY, FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES IN CONNECTION WITH OR RELATING TO THIS AGREEMENT (INCLUDING LOSS OF PROFITS, USE, DATA, OR OTHER ECONOMIC ADVANTAGE), NO MATTER WHAT THEORY OF LIABILITY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OR PROBABILITY OF SUCH DAMAGES. Notwithstanding the foregoing, in the event of a material breach that is not cured within the time specified in Section 6.3, Licensee may be liable to CableLabs and/or Third Party Beneficiaries, but in no event will Licensee's liability to CableLabs and/or Third Party Beneficiaries exceed \$5,000,000 per instance of breach. As used herein an "instance" shall be defined as a breach attributable directly or indirectly to one cause (including a series of similar problems related to a single cause) and may, for example, affect multiple models of devices sharing a common chassis.

**9. THIRD PARTY BENEFICIARIES.** Licensee agrees that Third Party Beneficiaries that are Cable Operators shall each be a third-party beneficiary of this Agreement. Licensee agrees that Third Party Beneficiaries that are Content Providers shall each be a third party beneficiary of this Agreement only with regard to a breach of this Agreement by Licensee that results in any unauthorized copying of "copy once" or "copy never" designated materials. In any claim or action brought by a Third Party Beneficiary that is a Content Provider, reasonable attorneys' fees shall be awarded to the prevailing party. Such Third Party Beneficiaries may seek injunctive relief or, for material breaches, actual damages (up to the limits contained in Section 8) only after the occurrence of all of the following: (a) such Third Party Beneficiary has given to CableLabs written notice of the potential breach; (b) CableLabs has thoroughly evaluated the potential breach; (c) CableLabs has consulted with Licensee regarding the problem; (d) CableLabs has provided Licensee with a reasonable opportunity to cure the breach and such breach remains uncured for thirty (30) days following the date of such notice, or a longer period as reasonably determined by CableLabs; and (e) CableLabs has informed all Cable Operators of such breach.

**10. CHANGES IN OCAP SPECIFICATION.** All Licensees shall have the right to participate in the OpenCable Change Process identified in Exhibit E of the CableCARD Host License Agreement. All changes to the OCAP Specification shall be made through such OpenCable Change Process.

**11. ADDITIONAL TERMS**

**11.1 Most Favored Status.** In the event that CableLabs enters into an OCAP Implementer License Agreement with another licensee and such other agreement has terms that are materially different from and more favorable to such other licensee than the terms in this Agreement are to Licensee, then Licensee shall have the option of amending this Agreement to reflect such material modification, *provided, however, that* if such other OCAP Implementer License Agreement contains other material modifications from the terms of this Agreement, Licensee also agrees to be bound by such other modifications. CableLabs shall post to the [www.OpenCable.com](http://www.OpenCable.com) website (with redaction of company-specific information) all OCAP Implementer License Agreements entered into by CableLabs which have any term different from the terms of this Agreement.

**11.2 Amendments.** Except as otherwise provided in this Agreement, no change, modification, extension, termination or amendment of or to this Agreement, or any of the provisions, Exhibits, or Annexes herein contained, shall be valid unless made in writing and signed by duly authorized representatives of the parties hereto.

**11.3 Assignment.** This Agreement may be assigned or transferred by either party to any successor by merger, purchase, or transfer of all or substantially all of its business or that portion of its business to which this Agreement relates, or other form of corporate reorganization. Except as set forth above, neither party may assign any rights or delegate any duties under this Agreement in whole or in part without the other party's prior written consent (such consent not to be unreasonably withheld), and any such attempted assignment shall be void and of no effect. This Agreement shall be binding upon and inure to the benefit of each of the parties, their successors and permitted assigns.

**11.4 Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of New York as applied to agreements made, entered into and performed entirely in New York and solely by New York residents.

**11.5 Compliance with Laws.** Licensee shall comply with all applicable laws and regulations, including export, re-export and foreign policy controls and restrictions that may be imposed by any government. Each party shall require its customers to assume an equivalent obligation with regard to import and export controls. This Section shall explicitly survive any termination of this Agreement.

**11.6 Independent Contractors.** The relationship of CableLabs and Licensee established by this Agreement is that of independent contractors. Nothing in this Agreement should be construed to create a partnership, agency, joint venture, or employer-employee relationship between or among any of the parties. Neither party has the authority to assume or create any obligation, express or implied, on behalf of the other for any purpose whatsoever. This Agreement does not give either party the power to direct and control the day-to-day activities of the other.

**11.7 Notices.** Any notices required or permitted to be made or given to either party pursuant to this Agreement shall be in writing and shall be delivered as follows with notice deemed given as indicated: (a) by personal delivery when delivered personally; (b) by overnight courier upon written notification of receipt; (c) by telecopy or facsimile transmission upon acknowledgment of receipt of electronic transmission; or (d) by certified or registered mail, return receipt requested, five days after

deposit in the mail. All notices must be sent to the addresses listed on the first page of this Agreement, or to such other address that the receiving party may have provided for the purpose of notice in accordance with this Section.

**11.8 Severability.** If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way, and the parties agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision.

**11.9 No Waiver.** No term or provisions hereof shall be deemed waived, and no breach excused, unless such waiver or consent is in writing and signed by the party claimed to have waived or consented. The waiver by either party of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach.

**11.10 Injunctive Relief.** Licensee acknowledges that material breach of this Agreement, will cause CableLabs, and/or the Third Party Beneficiaries hereto, to suffer immediate and irreparable harm, damage for which money alone cannot fully compensate. Licensee therefore agrees that upon such material breach, CableLabs shall be entitled to entry of a temporary restraining order, preliminary injunction, permanent injunction or other injunctive relief, without posting any bond or other security, compelling Licensee to comply with such obligations. This paragraph shall not be construed as an election of any remedy, or as a waiver of any right available to either party under this agreement or the law, including the right to seek damages, nor shall this paragraph be construed to limit the rights or remedies available under applicable law for any violation of any provision of this Agreement.

**11.11 Service Denial for Cable Services.** For the avoidance of doubt, Licensee acknowledges that nothing in this Agreement shall prevent a Cable Operator from denying services to any individual CableCARD, or set of CableCARDS, refusing to issue CableCARDS for use in any individual devices or set of devices, or otherwise preventing cable content from flowing to any individual device or set of devices built by Licensee hereunder. Notwithstanding the foregoing, CableLabs shall notify Licensee of any such proposed use of service denial, of which CableLabs is aware, to a model or class of devices made by Licensee hereunder prior to the use of such service denial by a Cable Operator and facilitate discussions between Licensee and the Cable Operator to alleviate the circumstances giving rise to the Cable Operator's desire to deny such service; provided that no Cable Operator shall be restrained from immediately denying such service if it reasonably believes that Controlled Content is subject to an unreasonable risk of unauthorized access, copying, or distribution, or is in material breach of Section 2 or 3 above.

**11.12 Entire Agreement.** This Agreement, including all Exhibits and applicable Annexes hereto (which are hereby incorporated into and made a part of this Agreement), constitutes the final, complete and exclusive statement of the agreement between the parties with respect to the subject matter hereof and supersedes any previous proposals, negotiations, or agreements, whether oral or written, made between the parties with respect to such subject matter. For the avoidance of doubt, the terms and conditions of this Agreement shall take precedence over any and all other terms and conditions in other agreements between CableLabs and Licensee, even if such other agreements are required for compliance to the OpenCable Specifications or otherwise necessary for the manufacture and use of the Certified OpenCable Devices as defined herein (including, without limitation, the CHILA, agreements for device digital certificates, etc.).

**Exhibit 1**  
**CableLabs® OpenCable**  
**INTELLECTUAL PROPERTY RIGHTS (IPR) POLICY**  
**(“OpenCable IPR Policy”)**

Licensee, by and on behalf of itself and its Affiliates, agrees to the terms of this OpenCable IPR Policy. Without prejudicing the right of Licensee to offer its intellectual property on fair, reasonable, and non-discriminatory terms, CableLabs strongly urges all parties to make such licenses available royalty-free. This OpenCable IPR Policy does not affect other CableLabs projects (e.g., DOCSIS, PacketCable, CableHome, VOD MetaData, etc.), which remain under royalty-free intellectual property arrangements. Pursuant to a separate written agreement, CableLabs reserves the right to establish royalty-free licensing terms for future OpenCable Specifications, or portions thereof, that Licensee may choose to join, or not join, at its discretion.

**1. DEFINITIONS**

Capitalized words used in this OpenCable IPR Policy and not otherwise defined herein shall have the meaning ascribed to them in the OCAP Implementer License Agreement.

**1.1 “Contribution”** shall mean any documents, software, tables, charts, descriptions, engineering change requests (ECRs), comments, e-mails, submissions, white papers, technical notes, or other information or materials that are, or have been, submitted by Licensee to CableLabs for incorporation into the OpenCable Specifications, and including any verbal contributions that are later confirmed in writing by the Licensee.

**1.2 “Draft OpenCable Specification”** means a version of an OpenCable Specification specifically identified by CableLabs as a “Work in Progress” or “Draft” version of the OpenCable Specification. Draft OpenCable Specifications are only made available by CableLabs for review and comment by Participants that have signed an *OpenCable Confidential Information Access Agreement* in substantially the same form as the agreement found at [www.opencable.com](http://www.opencable.com). Draft OpenCable Specifications specifically exclude Issued OpenCable Specifications. Each Draft OpenCable Specification shall be considered an OpenCable Specification.

**1.3 “Essential Claim”** means a claim of any patent or published patent application throughout the world that is issued now or in the future, that is necessarily infringed as a result of implementing any Issued OpenCable Specification. Essential Claims shall not include: (a) claims in design patents or design registrations; (b) claims related to technology or know-how that may be necessary to make or use a product or service, or portion thereof, that complies with an OpenCable Specification, but that is not set forth in an OpenCable Specification; (c) any enabling technologies that may be necessary to make or use any product or portion thereof that complies with the Issued Specification, but are not themselves expressly set forth in the Issued Specification (e.g., semiconductor manufacturing technology, compiler technology, object oriented technology, basic operating system technology, etc.); or (d) any claims other than as set forth above, even if contained in the same patent or published patent application as Essential Claims.

**1.4 “Intellectual Property Rights” or “IPR”** means all intellectual property rights throughout the world now or hereafter owned or licensable, without restriction or obligation to pay royalty to a licensor, including, without limitation, copyrights, trade secrets, patents and any other proprietary, privacy, or moral rights, but not including trademark rights.

**1.5 “Issued OpenCable Specification”** means any version of an OpenCable Specification that is identified by CableLabs as a current issued version of the OpenCable Specification. Upon becoming an Issued OpenCable Specification, an OpenCable Specification is no longer considered a Draft OpenCable Specification. Issued OpenCable Specifications shall not include draft versions of the OpenCable specifications released from time to time by CableLabs.

**1.6** “Participant” means an entity that has signed, and not terminated, an *OpenCable Confidential Information Access Agreement* in substantially the same form as the agreement found at [www.opencable.com](http://www.opencable.com).

## **2. COPYRIGHT LICENSE**

**2.1 Draft OpenCable Specifications.** Licensee grants to CableLabs, under any applicable IPRs of Licensee (excluding patents, patent applications, or trademarks) a world-wide, royalty-free, nontransferable, nonexclusive, perpetual, irrevocable, right and license to use, reproduce, make derivative works, distribute and sublicense any Contribution, and any such derivative works, to CableLabs members, other licensees, and Participants in the OpenCable Project, but only for the purpose of creating an OpenCable Specification.

**2.2 Issued OpenCable Specifications.** Licensee grants to CableLabs, under any applicable IPRs of Licensee (excluding patents, patent applications, or trademarks) a nonexclusive, nontransferable, worldwide, royalty-free, perpetual, irrevocable, sublicenseable right and license to: (a) use, copy, distribute, and make derivative works of any Contribution, to the extent it is included in an Issued OpenCable Specification, and to implement such Contribution and derivative works thereof; and (b) use, make, reproduce, sell, distribute, import, and transmit implementations of the Contribution and derivative works thereof, to the extent the same are included in an Issued OpenCable Specification. For the avoidance of doubt, no other express or implied license is granted under this Section 2.2, including no express or implied patent license.

## **3.0 AVAILABILITY OF PATENT LICENSE**

**3.1 Notice of Essential Claims.** Within sixty (60) days after receipt of any Draft OpenCable Specification, Licensee shall submit to CableLabs (or its designee) in writing a list of the Essential Claims (to the extent that such would be Essential Claims in the event the Draft OpenCable Specification matures to an Issued OpenCable Specification) in all patents and published patent applications owned, licensable, or otherwise controlled by Licensee or any of its Affiliates for which Licensee will *not* (or has no free right to) make licenses (or sublicenses), or cause licenses (or sublicenses) to be made, available on a reasonable and non-discriminatory basis to any third party (such notice, an “**Essential Claim Notice**”). In addition, Licensee shall have sixty (60) days from the Effective Date to submit an Essential Claim Notice to CableLabs relating to any existing Issued or Draft Specifications in existence at the time of the Effective Date. A valid Essential Claim Notice provided by Licensee shall also serve as a valid Essential Claim Notice for any subsequent versions of such Draft OpenCable Specification or Issued OpenCable Specification. Licensee shall, on a supplemental and ongoing basis, but no less than annually from the Effective Date, update Licensee’s list of Essential Claims on the Essential Claim Notice, and submit such to CableLabs (or its designee) in writing. Licensee may not submit an Essential Claim Notice as to Essential Claims that are necessarily infringed as a result of implementing any Contribution made by Licensee, or any portion thereof (an “**Invalid Essential Claim Notice**”). If such an Invalid Essential Claim Notice is received by CableLabs, it shall have no force or effect, and the applicable Essential Claims within such Invalid Essential Claim Notice shall be treated pursuant to Section 3.2 of this OpenCable IPR Policy. Any other valid Essential Claim Notice received by CableLabs in accordance with this Section 3.1 shall be effective as to the Essential Claims in the Essential Claim Notice thirty (30) days following receipt by CableLabs of such Essential Claim Notice. Unless noted otherwise by Licensee, a valid Essential Claim Notice provided by Licensee on one Draft Specification is sufficient notice for all subsequent versions of such Draft (or Issued) Specifications.

**3.2 Availability of License to Essential Claims.** With respect to all Essential Claims of all patents or published patent applications owned, licensed, or otherwise controlled by Licensee or any of its Affiliates which are *not* validly noticed to CableLabs (or its designee) by Licensee in accordance with the procedure set forth in Section 3.1 of this OpenCable IPR Policy, Licensee agrees to make licenses, or cause licenses to be made, available for such Essential Claims on reasonable and non-discriminatory

terms and conditions to any third party that desires to implement or has implemented any Issued OpenCable Specification. Such license may be limited to use of such Essential Claims with respect to products or services that comply with the relevant portion of the Issued OpenCable Specification.

**3.3 Reciprocity.** With respect to third parties, Licensee shall only be bound by this OpenCable IPR Policy to the extent such third parties submit to an equivalent undertaking with respect to any Essential Claims such third parties may own, license, or otherwise control. For avoidance of doubt, the foregoing obligation shall lapse with respect to any third party that initiates a claim against Licensee alleging it infringes any Essential Claims of such third party

**ANNEX A**  
**OCAP CONFORMANCE TEST PACKAGE (CTP)**

This *Annex A* is attached to, and made a part, of the OCAP Implementer License Agreement (the “**Agreement**”), by and between Cable Television Laboratories, Inc. (“**CableLabs**”) and \_\_\_\_\_ (“**Licensee**”).

Provided that the OCAP Conformance Test Package is indicated to be a part of the OCAP Licensed Materials on the initial page of the Agreement, and further provided that both parties have duly executed this *Annex A* below, Licensee shall receive a limited license to the OCAP CTP as set forth herein. The parties acknowledge and agree that this *Annex A* is entered into under and is governed by the terms and conditions of the Agreement. In the event of, and to the extent of, any conflict between this *Annex A* and the terms of the Agreement, the terms of the Agreement shall control and apply.

**1. DEFINITIONS.** All capitalized terms used in this *Annex A* shall have the meanings given to them in the Agreement. Any capitalized terms not defined in the Agreement shall have the meanings given to them herein.

**2. GRANT OF LICENSE**

**2.1 License.** Subject to and conditioned upon Licensee’s compliance with the terms of the Agreement and this *Annex A*, CableLabs grants to Licensee a limited, worldwide, non-exclusive, perpetual (unless terminated pursuant to Section 6 of the Agreement), non-transferable (except as permitted in Section 11.3 of the Agreement), royalty-free right and license under the Intellectual Property Rights (excluding trademark rights) owned or licensable by CableLabs to copy, and internally use the OCAP CTP, provided in source (where applicable) and object code form, but only for the purpose of testing whether an Implementation is a Compliant Implementation.

**2.2 Incomplete Implementations.** The foregoing license in Section 2.1 includes the right for Licensee to test Incomplete Implementations that are intended for delivery to an OpenCable Full Implementer. No other license is granted hereunder with respect to testing Incomplete Implementations.

**2.3 Limitations.** Licensee is *not* licensed hereunder to: (a) distribute the OCAP CTP to any third party, except to a contractor for the limited purposes of assisting the contractor in performing services for Licensee to test and certify Compliant Implementations (but only if such contractor has executed a confidentiality agreement with Licensee that is consistent with the rights and obligations of Licensee under this Agreement with respect to confidentiality and use of such OCAP CTP); (b) create derivative works of the OCAP CTP; (c) except as otherwise provided by law, disassemble or decompile binary portions of the OCAP CTP or otherwise attempt to derive the source code from such portions; (d) develop other test suites intended to validate compatibility with the Issued OCAP Specification or (e) use the OCAP Conformance Test Package to test Implementations for use outside of North America.

**3. FEE**

**3.1 License Fee.** In consideration of the license granted herein, upon execution hereof, Licensee shall pay to CableLabs the CTP Fee currently posted at [www.cablelabs.com/certqual/](http://www.cablelabs.com/certqual/).

**3.2 Maintenance Fee.** Licensee shall pay to CableLabs the annual CTP Maintenance Fee currently posted at [www.cablelabs.com/certqual/](http://www.cablelabs.com/certqual/) (as updated from time to time), due annually from the Effective Date of the Agreement, in exchange for which CableLabs shall provide and license to Licensee all updates, corrections, additions, changes, and other new versions of the OCAP CTP at the same time as made available to other licensees.

**3.2 Taxes.** Such fees do not include duties, taxes, withholdings, assessments, surcharges, value-added taxes, or any other charges imposed by any government or other taxing authority (collectively the “**Taxes**”); and, Licensee shall be solely responsible for, and indemnify CableLabs

against, such Taxes. Notwithstanding, Licensee shall not be responsible for income taxes which may be payable by CableLabs.

#### 4. CONFIDENTIAL INFORMATION

**4.1 Confidential Information.** “Confidential Information” shall include the OCAP CTP in source code form, and any materials related thereto that are claimed to be of value to CableLabs or its licensors and are clearly marked as “Confidential” or a similar expression. “Confidential Information” shall not be deemed to include, information which: (a) was in the possession of, or was known by, Licensee prior to its receipt from CableLabs, without an obligation owed to CableLabs, or its licensors, to maintain its confidentiality; (b) is or becomes generally known to the public without violation of this Agreement; (c) is obtained by Licensee from a third party, without an obligation owed to such third party to keep such information confidential; or (d) is independently developed by Licensee without use of the Confidential Information.

**4.2 Preservation of Confidentiality.** Licensee agrees that it shall use reasonable care to keep the Confidential Information strictly confidential and not disclose it to any other person except to its employees and contractors (who under the terms of their employment by or contract with Licensee are subject to an obligation not to disclose confidential information of Licensee) who have a “need to know” for the purposes of this Agreement. Licensee shall protect the Confidential Information with the same degree of care as it normally uses in the protection of its own similar confidential and proprietary information, but in no case with any less degree than reasonable care.

**4.3 Residual Knowledge.** This *Annex A* is not intended to prevent those employees or contractors of Licensees to whom Confidential Information is disclosed pursuant to this Agreement from using Residual Knowledge, subject to any applicable valid patents, copyrights, and semiconductor mask rights. As used herein, “Residual Knowledge” means ideas, concepts, know how or techniques related to technology disclosed by CableLabs under this Agreement that is retained in the unaided memories of Licensee’s employees or contractors who have had access to the OCAP CTP (if applicable). An employee’s or contractor’s memory will be considered unaided if the employee has not intentionally memorized the information for the purpose of retaining and subsequently using or disclosing it. The foregoing shall not constitute the grant of a right or license to use the Residual Knowledge from the source code for the OCAP Conformance Test Package to develop test suites intended to be licensed commercially by an entity other than CableLabs or a CableLabs member company to validate compatibility with the Issued OCAP Specification. For purposes of clarification, CableLabs acknowledges and agrees that this exception to the use of Residual Knowledge shall not apply to the development of test suites as development tools that are only for internal use by Licensee, or its sublicenses and contractors.

**4.4 Notices.** Any notices required or permitted to be made or given to either party pursuant to this Agreement shall be in writing and shall be delivered as follows with notice deemed given as indicated: (a) by personal delivery when delivered personally; (b) by overnight courier upon written notification of receipt; (c) by telecopy or facsimile transmission upon acknowledgment of receipt of electronic transmission; or (d) by certified or registered mail, return receipt requested, five days after deposit in the mail. All notices must be sent to the addresses listed below, or to such other address that the receiving party may have provided for the purpose of notice in accordance with this Section.

Name of Licensee: _____	Licensee Contact: _____
Address: _____	Title: _____
_____	Phone: _____
City: _____ State: _____	Fax: _____
Postal Code: _____ Country: _____	E-Mail: _____

The parties hereto, intending to be legally bound, have executed this *Annex A*.

<b>CABLE TELEVISION LABORATORIES, INC.</b> Signed: _____  Name: _____ Title: _____ Date: _____	<b>LICENSEE:</b> _____ Signed: _____  Name: _____ Title: _____ Date: _____
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**ANNEX B  
OCAP CODE**

This *Annex B* is attached to, and made a part, of the OCAP Implementer License Agreement (the “**Agreement**”), by and between Cable Television Laboratories, Inc. (“**CableLabs**”) and \_\_\_\_\_ (“**Licensee**”).

Provided that the OCAP Licensed Code is indicated to be a part of the OCAP Licensed Materials on the initial page of the Agreement, and further provided that authorized representatives of both parties have duly executed this *Annex B* below, Licensee shall receive a limited license to the OCAP Licensed Code, as set forth herein. The parties acknowledge and agree that this *Annex B* is entered into under and is governed by the terms and conditions of the Agreement. In the event of, and to the extent of, any conflict between this *Annex B* and the terms of the Agreement, the terms of the Agreement shall control and apply.

Subject to the terms of the Agreement and this *Annex B*, Licensee desires to obtain a license to the OCAP Licensed Code indicated below (collectively “**OCAP Licensed Code**”) located on CableLabs DocZone (access provided by CableLabs).

	<b>OCAP Licensed Code</b>	<b>Format</b>
	Sun-Licensed OCAP Code	Byte Code Verifier, Class File Parser
	CableLabs-Licensed OCAP Materials	E.g., OCAP Stubs, OCAP API Signatures, Eval OCAP CVC

**1. DEFINITIONS.** All capitalized terms used in this *Annex B* shall have the meanings given to them in the Agreement. Any capitalized terms not defined in the Agreement shall have the meanings given to them herein.

**2. GRANT OF LICENSE**

**2.1 License.** Subject to and conditioned upon Licensee’s compliance with the terms of the Agreement and this *Annex B*, CableLabs grants to Licensee a limited, worldwide, non-exclusive, perpetual (unless terminated pursuant to the Agreement), non-transferable, royalty-free, right and license under the Intellectual Property Rights (excluding trademark rights) owned or licensable by CableLabs to: (a) modify the OCAP Licensed Code as reasonably required to enable its use as part of Licensee’s Implementation; (b) compile the OCAP Licensed Code from source code to executable code and any intermediate code formats; (c) use, make, reproduce, sell, distribute, import, or transmit the OCAP Licensed Code in executable code form as part of Licensee’s Compliant Implementation; and (d) except for the Sun Java Byte Code Verifier and Sun Class File Parser, use, make, reproduce, sell, distribute, import, or transmit the OCAP Licensed Code in executable code form as part of Licensee’s software development kit or other similar development tool. Licensee may extend (and their rights shall include the right to sublicense) to any person or entity the rights set forth in clause (c) above, with the right of such person or entity to sublicense further. Licensee may only use the OCAP Licensed Code under the license granted hereunder to the extent that Licensee is engaged in the development, design, manufacture, or integration (including related testing and/or technical support) of an Implementation.

**2.2 Incomplete Implementations.** The rights of Licensee shall include the right to (a) use or reproduce the OCAP Licensed Code in executable format as part of an Incomplete Implementation that is intended for delivery to an OCAP Full Implementer; and (b) sell, import, transmit or otherwise distribute Incomplete Implementations, but only to an OCAP Full Implementer for subsequent integration and sale, importation, transmission, or distribution as part of a Complete Implementation. Licensee may not authorize the OCAP Full Implementer to distribute Licensee’s Incomplete Implementation unless it is integrated into and distributed as part of a Complete Implementation.

**2.3 Limitations.** Licensee is *not* licensed hereunder to: (a) distribute the OCAP Licensed Code to any third party, except to a contractor for the limited purposes of assisting the contractor in performing services for Licensee (but only if such contractor or contractor has executed a confidentiality agreement with Licensee that is consistent with the rights and obligations of Licensee under this Agreement with respect to confidentiality and use of such OCAP Licensed Code); (b) create derivative works of the OCAP Licensed Code; (c) except as otherwise provided by law, and only with respect to OCAP Licensed Code provided in object code format only, disassemble or decompile binary portions of the OCAP Licensed Code or otherwise attempt to derive the source code from such portions; (d) use the OCAP Licensed Code in Implementations for use outside of North America.

**3. FEE** There is no fee for the OCAP Licensed Code.

**4. CONFIDENTIAL INFORMATION**

**4.1 Confidential Information.** “Confidential Information” shall include the OCAP Licensed Code in source code form, and any materials related thereto that are claimed to be of value to CableLabs or its licensors and are clearly marked as “Confidential” or a similar expression. “Confidential Information” shall not be deemed to include, information which: (a) was in the possession of, or was known by, Licensee prior to its receipt from CableLabs, without an obligation owed to CableLabs, or its licensors, to maintain its confidentiality; (b) is or becomes generally known to the public without violation of this Agreement; (c) is obtained by Licensee from a third party, without an obligation owed to such third party to keep such information confidential; or (d) is independently developed by Licensee without use of the Confidential Information.

**4.2 Preservation of Confidentiality.** Licensee agrees that it shall use reasonable care to keep the Confidential Information strictly confidential and not disclose it to any other person except to its employees and contractors (who under the terms of their employment by or contract with Licensee are subject to an obligation not to disclose confidential information of Licensee) who have a “need to know” for the purposes of this Agreement. Licensee shall protect the Confidential Information with the same degree of care as it normally uses in the protection of its own similar confidential and proprietary information, but in no case with any less degree than reasonable care.

**4.3 Notices.** Any notices required or permitted to be made or given to either party pursuant to this Agreement shall be in writing and shall be delivered as follows with notice deemed given as indicated: (a) by personal delivery when delivered personally; (b) by overnight courier upon written notification of receipt; (c) by telecopy or facsimile transmission upon acknowledgment of receipt of electronic transmission; or (d) by certified or registered mail, return receipt requested, five days after deposit in the mail. All notices must be sent to the addresses listed below, or to such other address that the receiving party may have provided for the purpose of notice in accordance with this Section.

Name of Licensee: _____	Licensee Contact: _____
Address: _____	Title: _____
_____	Phone: _____
City: _____ State: _____	Fax: _____
Postal Code: _____ Country: _____	E-Mail: _____

The parties hereto, intending to be legally bound, have executed this *Annex B*.

<b>CABLE TELEVISION LABORATORIES, INC.</b> Signed: _____  Name: _____ Title: _____ Date: _____	<b>LICENSEE:</b> _____ Signed: _____  Name: _____ Title: _____ Date: _____
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**ANNEX C**  
**AUTOMATED TEST ENVIRONMENT**

This *Annex C* is attached to, and made a part, of the OCAP Implementer License Agreement (the “**Agreement**”), by and between Cable Television Laboratories, Inc. (“**CableLabs**”) and \_\_\_\_\_ (“**Licensee**”).

Provided that the OCAP Automated Test Environment is indicated to be a part of the OCAP Licensed Materials on the initial page of the Agreement, and further provided that authorized representatives of both parties have duly executed this *Annex C* below, Licensee shall receive a limited license to the OCAP Automated Test Environment, as set forth herein. The parties acknowledge and agree that this *Annex C* is entered into under and is governed by the terms and conditions of the Agreement. In the event of, and to the extent of, any conflict between this *Annex C* and the terms of the Agreement, the terms of the Agreement shall control and apply.

**1. DEFINITIONS.** All capitalized terms used in this *Annex B* shall have the meanings given to them in the Agreement. Any capitalized terms not defined in the Agreement shall have the meanings given to them herein.

**2. GRANT OF LICENSE**

**2.1 License.** Subject to and conditioned upon Licensee’s compliance with the terms of the Agreement and this *Annex C*, CableLabs grants to Licensee a limited, worldwide, non-exclusive, perpetual (unless terminated pursuant to the Agreement), non-transferable, royalty-free, right and license under the Intellectual Property Rights (excluding trademark rights) owned or licensable by CableLabs to use, and reproduce the OCAP Automated Test Environment in object code form only for the purpose of testing software or middleware designed for use in a Compliant Implementation in North America. Licensee may only use the OCAP Automated Test Environment under the license granted hereunder to the extent that Licensee is engaged in the development, design, manufacture, or integration (including related testing and/or technical support) of an Implementation.

**2.2 Limitations.** Licensee is *not* licensed hereunder to: (a) distribute the OCAP Automated Test Environment to any third party, except to a contractor for the limited purposes of assisting the contractor in performing services for Licensee (but only if such contractor has executed a confidentiality agreement with Licensee that is consistent with the rights and obligations of Licensee under this Agreement with respect to confidentiality and use of such OCAP Automated Test Environment); (b) except as otherwise provided by law, and only with respect to OCAP Automated Test Environment provided in object code format only, disassemble or decompile binary portions of the OCAP Automated Test Environment or otherwise attempt to derive the source code from such portions; or (c) use the OCAP Automated Test Environment in Implementations for use outside of North America.

**3. FEE**

**3.1 Fee.** In consideration of the license granted herein, upon execution hereof, Licensee shall pay to CableLabs the ATE Fee currently posted at [www.cablelabs.com/certqual/](http://www.cablelabs.com/certqual/). Such fee includes updates, corrections, changes, and other minor versions made available that enables testing of an OCAP 1.0 implementation or any optional OCAP 1.0 extensions (e.g., PVR, Home Networking, eTV, front panel extensions), so long as Licensee has paid the current annual Maintenance Fee for the Conformance Test Package as identified in Annex A of the Agreement.

**3.2** Such fee does not include duties, taxes, withholdings, assessments, surcharges, value-added taxes, or any other charges imposed by any government or other taxing authority (collectively the “Taxes”); and, Licensee shall be solely responsible for, and indemnify CableLabs against, such Taxes. Notwithstanding, Licensee shall not be responsible for income taxes which may be payable by CableLabs.

**4. CONFIDENTIAL INFORMATION**

**4.1 Confidential Information.** “Confidential Information” shall include the OCAP Licensed Code in source code form, and any materials related thereto that are claimed to be of value to CableLabs or its licensors and are clearly marked as “Confidential” or a similar expression. “Confidential Information” shall not be deemed to include, information which: (a) was in the possession of, or was known by, Licensee prior to its receipt from CableLabs, without an obligation owed to CableLabs, or its licensors, to maintain its confidentiality; (b) is or becomes generally known to the public without violation of this Agreement; (c) is obtained by Licensee from a third party, without an obligation owed to such third party to keep such information confidential; or (d) is independently developed by Licensee without use of the Confidential Information.

**4.2 Preservation of Confidentiality.** Licensee agrees that it shall use reasonable care to keep the Confidential Information strictly confidential and not disclose it to any other person except to its employees and contractors (who under the terms of their employment by or contract with Licensee are subject to an obligation not to disclose confidential information of Licensee) who have a “need to know” for the purposes of this Agreement. Licensee shall protect the Confidential Information with the same degree of care as it normally uses in the protection of its own similar confidential and proprietary information, but in no case with any less degree than reasonable care.

**4.3 Notices.** Any notices required or permitted to be made or given to either party pursuant to this Agreement shall be in writing and shall be delivered as follows with notice deemed given as indicated: (a) by personal delivery when delivered personally; (b) by overnight courier upon written notification of receipt; (c) by telecopy or facsimile transmission upon acknowledgment of receipt of electronic transmission; or (d) by certified or registered mail, return receipt requested, five days after deposit in the mail. All notices must be sent to the addresses listed below, or to such other address that the receiving party may have provided for the purpose of notice in accordance with this Section.

Name of Licensee: _____	Licensee Contact: _____
Address: _____	Title: _____
_____	Phone: _____
City: _____ State: _____	Fax: _____
Postal Code: _____ Country: _____	E-Mail: _____

The parties hereto, intending to be legally bound, have executed this *Annex C*.

<b>CABLE TELEVISION LABORATORIES, INC.</b>	<b>LICENSEE:</b> _____
Signed: _____	Signed: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____