

NFC FORUM, INC.

Test Specification License Agreement

This Agreement (Agreement) is entered into as of \_\_\_\_\_, 201\_, between \_\_\_\_\_ (Test Lab) and NFC Forum, Inc. (Licensor).

1. ELIGIBILITY

By entering into this Agreement, Test Lab (i) confirms that it is a Recognized Test Organization (RTO) in good standing with the Global Certification Forum (GCF) and that it will continue to meet the Eligibility Criteria from the Eligibility Date through the balance of the term of this Agreement. This Agreement will automatically terminate without further action by either party if at any time Test Lab ceases to be a GCF RTO or no longer meets any of the other Eligibility Criteria.

2. LICENSE GRANT

As of Test Lab's Eligibility Date, Licensor hereby grants Test Lab the right, to copy and use all specifications which at any time are available at the Licensor web site and identified as "Test Specifications" (Specifications) solely for the purposes set forth in Appendix A. This license grant does not include the right to sublicense or to distribute the Specifications, or to modify, create, sublicense or distribute any derivative works based upon any of the Specifications. For purposes of this Agreement, Test Lab's Eligibility Date means the date on which Licensor provides written notice to Test Lab that it has confirmed Test Lab's compliance with each of the Eligibility Criteria. Prior to Test Lab's receipt of such confirmation, Test Lab may only use the Specifications for study purposes and to establish compliance with this agreement.

3. PAYMENT AND REPORTING

a. Reporting. Within fifteen (15) days after the end of each calendar quarter, Test Lab shall provide to Licensor a report setting forth the information specified in Appendix B (each a "Report").

b. Testing Fees. On a calendar quarterly basis, Licensor will invoice Test Lab at the rate shown in Appendix A, Section 4 for the appropriate amount as indicated by Test Lab Reports.

c. Payments. Test Lab shall:

i. make a , non-refundable payment of \$2,500 on execution of this Agreement and annually on the anniversary of the agreement; and

ii. pay each invoice under this Agreement within thirty (30) days of the invoice date, and a late fee of 1% per month will apply to all late payments. Test Lab acknowledges and agrees that Licensor may change its rates and/or fees at any time and from time to time upon at least fifteen (15) calendar days' notice (which notice shall be deemed to be effective and delivered upon Licensor's posting of revised rates and/or fees on Licensor website.

d. Access to Books and Records. Test Lab agrees to prepare and maintain complete and accurate books and records relating to all tests conducted using Specifications, and all payments made or received in connection with such testing. While this Agreement is in effect, and for a period of one (1) year thereafter, Licensor shall have the right upon reasonable notice, not more than twice per calendar year, to examine, or have examined by an accountant designated by Licensor, any such books and records (including without limitation, copies of any agreements between Test Lab and any of Test Lab's test customers relating to any and all such tests and payments, and any amendments or modifications thereof) to the extent necessary to enable Licensor to determine and verify Test Lab's performance under this Agreement (each such examination, an "Audit"). In the event Licensor determines, in its reasonable discretion, that Test Lab has underpaid the amount of any amounts owed by Test Lab in accordance with this Agreement and such amount represents an underpayment of the amount then due, Test Lab agrees to reimburse Licensor for all costs incurred in connection with the applicable Audit, and shall promptly pay to Licensor the amount of such underpayment, along with all applicable late fees.

#### 4. NO WARRANTIES

THE SPECIFICATIONS ARE PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, COMPLETENESS AND NONINFRINGEMENT OF THIRD PARTY RIGHTS. IN NO EVENT SHALL LICENSOR, ITS MEMBERS OR ITS CONTRIBUTORS BE LIABLE FOR ANY CLAIM, OR ANY DIRECT, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, OR ANY DAMAGES WHATSOEVER RESULTING FROM LOSS OF USE, DATA OR PROFITS, WHETHER IN AN ACTION OF CONTRACT, NEGLIGENCE OR OTHER TORTIOUS ACTION, ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE SPECIFICATIONS.

#### 5. THIRD PARTY RIGHTS

Without limiting the generality of Section 4 above, Licensor ASSUMES NO RESPONSIBILITY TO COMPILE, CONFIRM, UPDATE OR MAKE PUBLIC ANY THIRD PARTY ASSERTIONS OF PATENT OR OTHER INTELLECTUAL PROPERTY RIGHTS THAT MIGHT NOW OR IN THE FUTURE BE INFRINGED BY AN IMPLEMENTATION OR THE USE OF ANY OF THE SPECIFICATIONS IN ITS CURRENT, OR IN ANY FUTURE FORM. IF ANY SUCH RIGHTS ARE DESCRIBED ON ANY SPECIFICATION, LICENSOR TAKES NO POSITION AS TO THE VALIDITY OR INVALIDITY OF SUCH ASSERTIONS, OR THAT ALL SUCH ASSERTIONS THAT HAVE OR MAY BE MADE ARE SO LISTED.

#### 6. INDEMNIFICATION

Test Lab agrees to indemnify, defend and hold harmless Licensor from all losses, costs, damages, claims and other expenses (including reasonable attorneys' fees) (collectively, "Losses") arising out of (i) any breach of any of the terms or conditions of this Agreement by Test Lab, or (ii) any third party claims relating to any of Test Lab services or activities, including but not limited to, any claim that a third party intellectual property right has been infringed in connection with Test Lab's provision or performance of any services.

## 7. RESTRICTIONS ON USE AND DISCLOSURE

a. Confidentiality. For the purposes of this Agreement, "Confidential Information" shall mean any and all proprietary or confidential information or materials disclosed in connection with the performance of this Agreement and conspicuously marked as "Confidential" or "Proprietary" by the party disclosing such information ("Discloser"), and with respect to (i) Licensor, shall also include any and all Specifications, whether or not so marked, and (ii) Test Lab, shall include all information included in Reports; provided, however, that the term "Confidential Information" shall not include any information that (1) is or becomes generally publicly available through no fault of the party receiving such information ("Recipient"); (2) is lawfully obtained from a third party that has the right to make such disclosure; (3) is known to Recipient prior to receipt from the Discloser or any officer, agent, contractor or representative thereof; or (4) Recipient independently develops without use of or reference to any of the Discloser's Confidential Information. With respect to the Discloser's Confidential Information, the Recipient shall:

i. not use, or allow any other person or entity to use, such Confidential Information for any purpose other than as necessary under the terms of this Agreement, or as otherwise may be specifically authorized by the Discloser in writing (the "Permitted Purposes");

ii. except for Permitted Purposes, not make any copies or summaries of such Confidential Information without the Discloser's prior written approval;

iii. take reasonable precautions and measures to maintain the confidentiality of such Confidential Information, which precautions and measures shall be at least equal to those taken to protect its own Confidential Information;

iv. not disclose or furnish such Confidential Information to any person or entity except to employees and consultants of the Recipient who have a need to know the information for the Permitted Purposes and are under a written obligation to maintain the confidentiality of the Confidential Information; and

v. promptly return such Confidential Information to the Discloser, including all copies (excluding archival and/or automatically generated backup copies), drawings, documents, and other manifestations containing any such Confidential Information, immediately upon (A) request (or at the Discloser's discretion, destroy such Confidential Information with evidence in writing), or (B) termination of this Agreement. Notwithstanding the foregoing, Licensor may retain copies of all test results and other data relating to testing conducted by Test Lab, and may publicly disclose the same on an anonymized basis during and after the term of this Agreement.

b. No Implied Grant of License. Unless otherwise stated herein, all Confidential Information shall remain the property of the Discloser. No license or other right under any patent, copyright, trade secret, trademark or other proprietary right of Discloser is granted or implied by Discloser's disclosure of any such Confidential Information to the Recipient.

c. Disclosures Required by Law. A disclosure of Confidential Information by the Recipient (i) in response to a valid order by a court or other governmental body, (ii) otherwise required by law, or (iii) necessary to establish the rights of either party under this Agreement, shall not be considered to be a breach of this Agreement or a waiver of confidentiality; provided, however, that Recipient shall provide prompt written notice thereof to Discloser to enable Discloser to seek a protective order or otherwise prevent such disclosure.

## 8. TERM AND TERMINATION

Subject to the remainder of this Section 8, this Agreement shall be effective upon its acceptance by Licensor, shall remain in effect for an initial term of one year, and shall renew annually unless either party gives thirty days prior written notice of nonrenewal.

a. Termination by Test Lab. Test Lab may terminate this Agreement:

i. without cause by providing Licensor with ninety (90) days prior written notice of its intent to terminate, such termination to be effective at the end of such period.

ii. for cause, in the event that (A) Licensor violates or does not comply or cooperate fully with any material terms of this Agreement, or (B) Licensor makes any assignment of assets or business for the benefit of creditors, if a trustee or receiver is appointed to conduct Licensor's business or affairs, or if Licensor is adjudged in any legal proceeding to be in either a voluntary or involuntary bankruptcy; by providing written notice cause in accordance with Section 8(c) below.

b. Termination by Licensor. Licensor may terminate this Agreement:

i. without cause by providing Test Lab with ninety days prior written notice of its intent to terminate, such termination to be effective at the end of such period.

ii. immediately upon notice if it is discontinuing all certification programs relating to the Specifications subject to this Agreement.

iii. immediately upon notice to Test Lab in the event that Licensor suspects, determines or receives notice that any of the Specifications or any portion thereof, or any service of Test Lab's incorporating or related to any Specification, or Test Lab's use of any Specification, may give rise to a claim against Licensor.

iv. for cause in accordance with Section 8(c) below if (A) Test Lab violates or does not comply or cooperate fully with any material terms of this Agreement, (B) Test Lab fail to maintain compliance with the Eligibility Criteria, (C) Test Lab makes any assignment of assets or business for the benefit of creditors, if a trustee or receiver is appointed to conduct Test Lab's business or affairs, or if Test Lab is adjudged in any legal proceeding to be in either a voluntary or involuntary bankruptcy.

c. Notice of Termination for Cause. A party shall provide the other party with thirty days written notice of intent to terminate pursuant to Section 8(a)(ii)(A) (in the case of Test Lab) or Section 8(b)(iv)(A) (in the case of Licensor), stating the basis for termination, and such termination shall be effective immediately as of the end of such thirty day period unless the party receiving notice cures the condition giving rise to such notice to the other party's reasonable satisfaction prior to such effective date, in which case such termination shall be ineffective. Termination pursuant to any other clause of Section 8 shall be effective immediately without any notice required.

d. Effect of Expiration or Termination. Upon any expiration or termination of this Agreement by either party and for any reason, Test Lab shall (i) immediately cease conducting any testing or other services relating to any Specification, and (ii) within thirty (30) days, deliver a final Report to Licensor with full information for the portion of the calendar quarter in which termination occurred, accompanied by payment in full of all test and other fees owing under this Agreement, whether or not (in the case of test fees) the same have been previously invoiced by Licensor. Notwithstanding any termination or expiration of this Agreement the provisions of Sections 3 – 10 shall remain in effect indefinitely.

#### 9. ASSIGNMENT AND TRANSFER

Test Lab may not assign or transfer this Agreement or any right granted hereunder without the prior written consent of Licensor, and any attempted assignment without consent shall be void.

#### 10. NOTICES

All notices required under this Agreement shall be in writing, and shall be deemed effective immediately, if delivered by email, and five days from deposit in the mails. Notices and correspondence to either party shall be sent to its address as it appears below. This Agreement shall be construed and interpreted under the internal laws of the United States and the Commonwealth of Massachusetts, without giving effect to its principles of conflict of law. Any notice to Licensor at the address below, and to Test Lab at its address as it appears on the signature page to this agreement, or, in either case, to such other address as a party has provided to the other party in a notice delivered in accordance with this Section.

NFC Forum, Inc. 401 Edgewater Place, Suite 600 Wakefield, Massachusetts 01880 USA

Email: \_\_\_\_\_

*Remainder of page intentionally left blank*

In witness whereof each party has caused this Agreement to be executed by its duly authorized representative.

[TEST LAB]

NFC FORUM, INC.

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

Address: \_\_\_\_\_

\_\_\_\_\_

Email: \_\_\_\_\_

## Appendix A

### Terms of Eligibility, Use and Fees

#### 1. Eligibility Criteria

Test Lab's rights under this Agreement are contingent upon its initial and continuing compliance with the following Eligibility Criteria. Further information about what evidence will be acceptable for each item may be found at the Licensor website here <http://nfc-forum.org/recognized-testing-organizations-rtos-compliance-testing-information/>

- a. Maintenance of required insurance
- b. Installation and maintenance of any NFCF approved test tools as specified on the NFCF Certification Web site
- c. Evidence of maintaining the required level of participation in, and passing the Licensor's Analog tool correlation testing for, Labs (ILCT), as specified on the NFCF Certification Web Site.
- d. Satisfactory initial and periodic audit, by a third party acceptable to Licensor and at Test Lab's expense, of each site where Test Lab proposes to conduct Specification compliance testing, conducted by an authorized representative of Licensor.
- e. If Test Lab provides testing to third parties, maintenance of accreditation as an ISO 17025 lab accredited for NFC analog testing
- f. If Test Lab conducts testing of its own devices, an ongoing commitment to follow the principles of ISO 17025 in doing so.

2. Purpose. Test Lab's use of the Specifications is limited to such uses as are reasonably necessary in order for Test Lab to provide internal or third party testing of mobile devices in connection with GCF's certification testing program. Mobile devices are defined as \_\_\_\_\_.

3. Reports. All reports shall be submitted using the form attached to this Agreement as Appendix B

4. Test Fees. Test Lab shall pay a quarterly test fee equal to 10% of the gross testing revenue received by Test Lab from third parties relating to testing against Specifications during the preceding calendar quarter.

Appendix B

Report Form

Sample form, to be converted to a .pdf form for reporting purposes:

**Test Specifications Quarterly Revenue Report**

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

Name of test lab: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Contact Person \_\_\_\_\_

Contact email / phone \_\_\_\_\_

**GCF RTO Lab**

Per the NFC Forum License Agreement, a 10% fee on all NFC Forum test related services will be imposed.

	<b>Quarterly Reported Revenue</b>	<b>RTO Fee</b>
Qtr. 1	\$ _____	\$ _____
Qtr. 2	\$ _____	\$ _____
Qtr. 3	\$ _____	\$ _____
Qtr. 4	\$ _____	\$ _____
<b>Total</b>	<b>\$ _____</b>	<b>\$ _____</b>

**Total Service Fees Invoiced for current quarter in USD:** \_\_\_\_\_

Check boxes for:

payment enclosed (check made payable to NFC Forum)

send an invoice