

ADVANCED TELEVISION SYSTEMS COMMITTEE, INC.

CERTIFICATION MARK POLICY

One of the core functions and activities of the ADVANCED TELEVISION SYSTEMS COMMITTEE, INC. ("ATSC") is the development and promotion of the implementation of voluntary Standards and Recommended Practices to advance terrestrial digital television broadcasting, and to facilitate interoperability with other media. During the past several months, the officers and staff of ATSC have become aware that member organizations of ATSC and other entities are interested in the development by ATSC of a program through which compliance with one or more Standards promulgated by ATSC may be easily and symbolically indicated on the products that comply with those Standards. In view of that demand for such a program and the belief on the part of ATSC that such a program would be useful and beneficial to the Industry and to consumers, ATSC has developed and approved this Certification Mark Policy.

- 1. Purpose And Elements.** This Certification Mark Policy (the "Policy") defines the ATSC processes for the adoption, creation and management of certain trademarks and/or service marks (collectively, "Mark" or "Marks") that will be controlled by ATSC but will be used by the digital television broadcasting industry (the "Industry") to signify compliance with one or more ATSC Standards. Under this Policy, members of the Industry (whether members of ATSC or not) may request permission to use a Mark that ATSC has created, or that a Mark be created and/or adopted by ATSC, when the Industry member desires to convey to the Industry or to consumers that the member's product complies with a single ATSC standard, or a set of standards that ATSC has defined for the purpose of ensuring a certain minimum capability.
- 2. Applicable Trademark Principles.** This Policy is concerned with the category of trademarks and/or service marks known as "certification marks." The Trademark Act of 1946, as amended, defines a certification mark as

any word, name, symbol, or device, or any combination thereof --

(1) used by a person other than its owner, or

(2) which its owner has a bona fide intention to permit a person other than the owner to use in commerce and files an application to register on the principal register established by this Act,

to certify regional or other origin, material, mode of manufacture, quality, accuracy, or other characteristics of such person's goods or services or that the work or labor on the goods or services was performed by members of a union or other organization.

ATSC has adopted and will seek federal registration as Certification Marks for certain Marks relating to one or more ATSC Standards. As the owner of the Marks and the certifying party, ATSC will own all right, title and interest to the use of said Certification Mark(s) on or in connection with digital television broadcasting. It shall be the policy of ATSC to make available the Certification Mark(s), as defined herein, on reasonable and non-discriminatory terms, in accordance with this Policy.

As the certifying party, ATSC shall maintain an enforcement program, while allowing manufacturers to declare compliance with the Policy. The applicable trademark laws require ATSC to maintain "legitimate control" over the Certification Marks. This requirement translates into two operational requirements. The first is that ATSC certify, or have Certification Mark users self-certify, that the product complies with some documented capability, such as a Standard. The second is that ATSC promulgate some enforcement method. The latter will be accomplished in the ATSC Certification Mark User Agreement, through a provision that allows ATSC to test or have tested a product to determine if it indeed complies with the Standard associated with the Mark.

ATSC may, from time to time, adopt, create and/or license use of Marks or types of Marks other than Certification Marks. This Policy does not apply to the adoption, creation and/or licensing of such Marks.

3. **Additional Definitions.** Capitalized terms used in this Policy shall have the meanings ascribed to them in this Section.
 - a. **"Applicant"** means a manufacturer of digital television equipment that desires to become a Certified User of one or more ATSC Certification Marks through the completion of the procedures outlined in the Policy.
 - b. **"ATSC"** means the Advanced Television Systems Committee, Inc.
 - c. **"Certification Mark"** means any certification mark that may be adopted by ATSC in accordance with this Policy.
 - d. **"Certified User"** means a manufacturer and/or marketer of goods and/or services relating to the digital television industry that is authorized to use the Certification Marks in connection with goods and/or services meeting certain Standards promulgated by ATSC.

- e. **“Expert Reviewer(s)”** means independent expert(s) retained by ATSC to review and evaluate information or data submitted by Applicants or Certified Users regarding compliance with the Standard.
 - f. **“Standard”** means an ATSC Standard, as defined in the ATSC Bylaws, for which ATSC has adopted a Certification Mark.
 - g. **“Term”** means that period, the duration of which shall be determined by ATSC in its sole discretion, for which a Certified User is granted the right to use the Certification Mark(s).
4. **Adoption Of Certification Marks.** It shall initially be the responsibility of the officers and staff of ATSC to recommend that a Certification Mark be adopted to reflect compliance with a particular Standard, and to design and recommend a particular Certification Mark to be adopted for that purpose. Upon the recommendation of the officers of ATSC, final approval and adoption of a particular Certification Mark shall be the function of the ATSC Board of Directors. The adoption of any particular Certification Mark shall include appropriate legal review and clearance of the proposed Mark. ATSC shall maintain, and may, in its sole discretion, make available to the Industry, a list of Certification Marks that ATSC has adopted and the particular Standard with which each Certification Mark is associated.
5. **Application For Certification.** Each Applicant must complete and submit an Application For Certification, the form of which is set forth as Appendix 1 hereto, in which an Applicant warrants and attest to its eligibility to become a Certified User and the compliance of a particular product or class of products with the Standard associated with the Certification Mark for which the Applicant is seeking Certified User status.
6. **Expert Reviewers / Independent Testing Laboratory.** This Policy relies on self-certification by Applicants and/or Certified Users that goods and/or services manufactured, produced, offered, and/or sold by each Applicant and/or Certified User complies with the applicable Standard. However, ATSC may, in its sole discretion, from time to time
- a. require Applicants and/or Certified Users to produce and submit information and/or data to support eligibility and compliance with the Standard associated with the Certification Mark for which the Applicant is seeking, or the Certified User is seeking renewal of, Certified User status.
 - b. recruit Expert Reviewers to review and evaluate information or data submitted by Applicants and/or Certified Users regarding compliance with the Standard. ATSC may recruit Expert Reviewers from ATSC member entities, but is not limited to selecting ATSC members as Expert Reviewers. Expert Reviewers shall evaluate

the information or data submitted by Applicants and/or Certified Users and any data generated by independent testing laboratories (see below), for the purpose of making recommendations to ATSC regarding eligibility and/or compliance with the Standard. ATSC shall not be obligated to recruit an Expert Reviewer, nor to follow any recommendation(s) of an Expert Reviewer.

- c. recruit an independent testing laboratory to evaluate information or data submitted by Applicants or Certified Users regarding compliance with the Standard. If conducted, such evaluations shall be conducted using protocols developed by ATSC and/or Expert Reviewers. Any data generated by an independent testing laboratory is sent to ATSC and/or an Expert Reviewer, which shall evaluate the data to determine whether the independent laboratory data corroborates the data submitted by the Applicant and/or Certified User. If the two sets of data are found to corroborate each other, and support the claims of the Applicant and/or Certified User regarding compliance with the Standard, then the Expert Reviewer will recommend Certified User status.

7. **Use of the Certification Mark(s).** If ATSC determines to its satisfaction that the Application for Certification, or, where applicable, the information and/or data submitted by an Applicant and/or Certified User, supports the claims of eligibility and compliance with the Standard, then the Applicant or, in the case of renewal, the Certified User shall be eligible to use the Certification Mark(s) on or in connection with its goods and/or services, on the packaging thereof and/or in advertisements therefor. Use of the Certification Mark(s) is governed by, and shall be in accordance with the terms of, the Certification Mark User Agreement that is shown in Appendix 2 hereto, which must be executed by each Applicant. Upon execution of the Certification Mark User Agreement, the Applicant shall be considered a Certified User and shall be listed as such in ATSC publications, including a current "Certified User" list that will be available on the ATSC Internet web site.

8. **Term of Use.** In all cases, Certified User status shall be granted for a limited Term, the duration of which shall be determined by ATSC in its sole discretion, and certification must be renewed prior to the expiration of the Term.

9. **Re-Certification.** Each Certified User must submit no later than 30 days prior to the expiration of the Term:
 - a. a Renewal Certificate, the form of which is set forth as Appendix 3 hereto, in which the Certified User warrants and attests to its continued compliance with the Standard and
 - b. a signed Certification Mark User Agreement.

10. **Administration of Certification Mark Policy.** This Policy will be administered in a manner that is open, transparent and available to all interested parties whether members of ATSC or not, and in a manner that is non-discriminatory. This Policy will also be administered in a manner that minimizes the burdens on the ATSC officers and staff, eliminates to the maximum extent possible any potential liabilities that could arise as a result of the creation of the ATSC Certification Mark program, and relies, as much as possible, on self-certification by Industry members.

**Appendix 1 to ATSC
Certification Mark Policy**

APPLICATION FOR CERTIFICATION

Name of Applicant (Company): _____

Address: _____

Company Web Site: _____

Contact Name: _____

Telephone: _____ **Facsimile:** _____

Email Address: _____

ATSC Certification Mark being applied for: _____

Product Name: _____

Product Model Number: _____

Product Description: _____

The undersigned officer or other representative of Applicant hereby represents and warrants as follows:

- 1. The undersigned is vested by Applicant with the authority to make the representations and warranties herein on Applicant's behalf.**
- 2. Applicant has read and understands the ATSC Certification Mark Policy and the Standard associated with the Certification Mark being applied for.**
- 3. Applicant hereby certifies that the above-identified Product complies with the Standard associated with the Certification Mark being applied for.**

Signature: _____

Name: _____

Title: _____

Date: _____

**Appendix 2 to ATSC
Certification Mark Policy**

ADVANCED TELEVISION SYSTEMS COMMITTEE, INC.

CERTIFICATION MARK USER AGREEMENT

THIS AGREEMENT made and entered into this _____ day of _____, 20__ (the "Effective Date"), is by and between ADVANCED TELEVISION STANDARDS COMMITTEE, INC., a _____ corporation whose principal place of business is _____ ("ATSC"), and _____ ("User");

WITNESSETH:

WHEREAS, ATSC is an international, non-profit organization that develops and fosters implementation of voluntary Standards and Recommended Practices (collectively, "Standards") to advance terrestrial digital television broadcasting, and to facilitate interoperability with other media;

WHEREAS, ATSC has adopted a Certification Mark Policy (the "Policy"), available at http://_____, which is incorporated by reference as if fully set forth herein, to define the ATSC processes for the adoption, creation and management of certain trademarks and/or service marks that will be controlled by ATSC but will be used by the digital television broadcasting industry to signify compliance with one or more ATSC Standards; and

WHEREAS, ATSC has developed the Standard entitled _____, available at http://_____, which is incorporated by reference as if fully set forth herein; and

WHEREAS, ATSC has adopted as Certification Mark(s) the Mark(s) set forth in Exhibit 1 attached hereto and incorporated herein by reference (hereinafter collectively referred to as the "Mark" or "Marks") and owns all right, title and interest to the use thereof on or in connection with indicating compliance with the Standard; and

WHEREAS, User is a manufacturer and/or marketer of goods and/or services relating to the digital television industry; and

WHEREAS, User desires to be authorized to use the Mark(s) in connection with goods and/or services meeting certain standards or recommended practices promulgated by ATSC, more particularly the Standard, and ATSC is willing to grant such authorization to User in accordance with the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises set forth herein, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **GRANT OF LICENSE**

ATSC hereby grants to User a non-exclusive, non-transferable and royalty-free right and permission to use the Marks only in connection with the manufacture, packaging, marketing and sale of the product or class of products, or the offering of the services, set forth in Exhibit 2 attached hereto (collectively, the "Goods"), said Goods being certified by User as complying with the Standard. This right to use is effective only as long as User is in compliance with all of the provisions of this Agreement, or until sooner terminated hereunder.

2. APPROVALS AND QUALITY CONTROL

- 2.1 User shall self-certify only those Goods that it determines to be conforming to the Standard. For each product in connection with which User intends to use a Mark, User agrees to execute a self-certification statement and to file such statement with ATSC prior to distribution of goods bearing any Marks, or performance of any services in connection with which any Marks are used.
- 2.2 User shall make certain that the Goods on or in connection with which it uses the Marks at all times conform to the Standard; and agrees that if ATSC, in its sole discretion, determines that User's Goods, method of manufacture or provision of services, quality control or quality control procedures, or product specifications fail to comply with the Standard, User shall make such changes as are necessary to bring said methods and/or procedures into compliance with the Standard within twenty (20) days from receipt of written notification by ATSC of non-compliance. User agrees that continued noncompliance, as determined by ATSC in its sole discretion, after such twenty (20) day cure period shall constitute a material breach of this Agreement.
- 2.3 From time to time during the term of this Agreement, ATSC may request User to provide to ATSC a sample of Goods, packaging, containers, labels, advertising or promotional materials on or in connection with which the Marks are being used so that ATSC can determine that the Marks are being used in a manner that complies with this Agreement.
- 2.4 From time to time during the term of this Agreement, ATSC may require User to produce and submit information and/or data to demonstrate compliance with the Standard so that ATSC can determine that the Marks are being used in a manner that complies with this Agreement and the Policy.

3. USER'S WARRANTIES AND REPRESENTATIONS

User acknowledges that the representations contained in User's Application For Certification ("Application") and/or Renewal Certificate were expressly relied upon for the granting of this license, and such representations and said Application and/or Renewal Certificate are incorporated into this Agreement and made a part hereof by reference

thereto. User agrees to abide strictly with the said representations. User warrants and represents that the representations made in its Application and/or Renewal Certificate are true and correct; and that its Goods offered, sold, and/or distributed to others comply with the Standard.

4. **OWNERSHIP OF RIGHTS AND GOODWILL**

- 4.1 User acknowledges that ATSC owns all right, title, and interest in and to the Marks, and has the sole right to control use of the Marks. User agrees that any use of the Marks that it has made in the past, is now making or will make in the future has not created and will not create in User any right, title or interest in or to the Marks, but instead shall inure to the benefit of, and be on behalf of, ATSC.
- 4.2 User recognizes the great value of the goodwill associated with the Marks and acknowledges that the Marks and all rights therein and goodwill pertaining thereto belong exclusively to ATSC, and that the Marks are inherently distinctive and/or have a secondary meaning in the mind of the public.
- 4.3 ATSC represents and warrants that it owns all right, title and interest in and to the Marks and has the right to grant the rights and permission set forth in this Agreement.

5. **TERM; RENEWAL**

- 5.1 The term of this Agreement is two (2) years from the Effective Date hereof unless terminated as provided herein. There is no obligation on the part of ATSC to extend the term of this Agreement or to extend User's right to use the Marks after the expiration of this Agreement; provided, however, that ATSC will not unreasonably withhold renewal or extension of this Agreement.
- 5.2 If User desires to renew this Agreement, User shall submit to ATSC, no later than thirty (30) days prior to the expiration of this Agreement, a Renewal Certificate in the form of Exhibit 3 hereto, stating, if true, that there have been no changes made in or to the Certified User's Goods, quality control and/or quality control procedures and that such Goods continue to comply with the applicable Standard(s).

6. **TERMINATION**

- 6.1 ATSC may terminate this Agreement by giving written notice to User if User breaches any provision of this Agreement and User fails to correct such breach within thirty (30) days of being notified by ATSC.
- 6.2 User shall have the right to cease using the Marks on any goods and/or services, and to terminate this Agreement, at any time by providing written

notice to ATSC of such voluntary cessation of use and termination. No cost will be imposed on User for such voluntary termination.

- 6.3 Upon termination of this Agreement, all the rights and privileges herein granted to User shall cease and terminate and User shall immediately cease to use the Marks in any manner whatsoever and no products, containers, packaging, labels advertising or publicity material bearing the Marks shall be sold or otherwise publicly distributed by User or parties in privity with User. It is further expressly agreed that any cause of action for infringement of the Marks, or for violation of this Agreement, which ATSC may have against User, including the right to reasonable attorney's fees and costs, shall survive the termination of this Agreement.

7. **USE AND DISPLAY OF MARKS; ADVERSE DISPLAYS**

- 7.1 User agrees that each use of the Marks on any products, packaging, containers, labels, advertising and promotional materials shall be followed by an appropriate form of trademark notice, including (when appropriate) an encircled "R" ("®"), as directed by ATSC. Furthermore, User shall place the wording "_____ is a Certification Mark [or registered Certification Mark] of the Advanced Television Standards Committee, Inc." on all packaging of any and all products and in promotional and other material as may be required by ATSC, whenever the Marks appear.
- 7.2 User represents, covenants and agrees that it will use the Marks only in the form and manner approved by the ATSC and will not use the Marks in combination with or close proximity to any other trademarks, service marks or certification marks, without the prior written approval of ATSC; and that it shall comply with all applicable laws and regulations, obtain all appropriate government approvals, and maintain the highest standards of health, safety, and welfare pertaining to the sale, distribution, and advertising of goods and/or services covered by this Agreement.
- 7.3 User agrees that it will not in any way suggest or imply that ATSC or any of its members has endorsed, recommended, sponsored or approved any goods or services of User.

8. **NO AGENCY RELATIONSHIP; CONTROL**

- 8.1 Nothing in this Agreement is intended by the parties to create an agency, partnership, or joint venture, or to create a fiduciary relationship or any other relationship between them, other than that of "Certification Mark Owner" and "Certified User." It is understood and expressly agreed that User is not an agent, legal representative, subsidiary, joint venturer, partner, employee, or servant of ATSC for any purpose whatsoever, but instead is an independent contractor, and is in no way authorized to make

any contract, warranty or representation, or to create any obligation on behalf of, ATSC.

- 8.2 User shall be solely responsible for all its costs of operation, including marking, labeling, packaging, advertising, and/or promotional expenses necessitated to comply with the terms of this Agreement.

9. **INDEMNIFICATION**

It is understood and expressly agreed that ATSC assumes no liability for any claims, injuries or legal cost connected therewith, relating to or arising as a result of the manufacture, sales or merchandising by User of products bearing the Marks or the use by User of the Marks. Accordingly, User agrees to and hereby does indemnify and holds harmless from any such claims, actions, proceedings, injuries, damages, costs, expenses and other losses and liabilities (including without limitation attorneys' and accountants' fees) accruing or resulting from customer or other usage of the products for any reason, including but not limited to defective or tampered with merchandise that either is or is not marked with or bearing the Marks (the "Indemnified Claims"), the following entities: ATSC, its officers, agents, employees and assigns; and ATSC's member entities, to the extent that such Indemnified Claims purportedly or allegedly arise from such ATSC member entities' status as members of ATSC.

10. **INFRINGEMENTS**

User agrees to notify ATSC promptly in writing of any infringement, imitation, or unauthorized use by third parties of the Marks that comes to User's attention. User agrees to assist ATSC in enforcement of any rights of ATSC related to any infringement, imitation, or unauthorized use of the Marks. ATSC shall have the sole right to determine whether or not any action shall be taken on account of any such infringement, imitation, or unauthorized use, and ATSC shall have the sole right to employ counsel of its choosing and to direct the handling of the litigation and any settlement thereof. ATSC shall be entitled to receive and retain all settlement amounts and all amounts awarded as damages, profits or otherwise in connection with such suits.

11. **ASSIGNABILITY**

This Agreement is assignable by User, with prior notice to ATSC, to a purchaser of User's business to which the Marks pertain, and User shall have no right to grant permission to any other party to use the Marks without express written permission of ATSC, which shall not be unreasonably denied.

12. **SEVERABILITY**

In the event that any term or provision of this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other term or provision, and this Agreement shall be interpreted and construed as if such term or provision, to the extent the same shall have been held to be invalid, illegal or unenforceable, had never been contained herein.

13. **GOVERNING LAW**

This Agreement shall be governed by the federal trademark laws of the United States as to trademark matters and the laws, rules and regulations of the District of Columbia (without regard to conflicts of laws principles) as to contract formation, interpretation and construction matters.

14. **LIMITATION OF ACTIONS**

Any and all claims and actions arising out of or relating to this Agreement, the relationship between User and ATSC, or the use by User of the Marks must be commenced within one (1) year from the discovery of the facts giving rise to any such claim or action.

15. **ENTIRE AGREEMENT**

This Agreement and the exhibits attached hereto constitute the entire, full, and complete Agreement between ATSC and User concerning the subject matter of this Agreement, and supersede all prior agreements. User and ATSC have not relied on any representations other than those set forth in this Agreement. This Agreement may be modified only by a writing, signed by both parties, which specifically identifies this Agreement by name and date.

16. **MISCELLANEOUS**

16.1 **Headings.** The headings of sections and paragraphs herein are for convenience of reference only and are without substantive significance.

16.2 **No Waiver.** Any waiver by any party of any right arising from any breach of any term of this Agreement shall not be construed as a continuing waiver of any other breach of the same term or any other term of this Agreement by the other party.

16.3 **Execution In Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date first above written.

ADVANCED TELEVISION SYSTEMS, INC. [USER]

By:

Title: _____

By:

Title: _____

**Exhibit 1 to ATSC
Certification Mark User Agreement**

MARKS

**Exhibit 2 to ATSC
Certification Mark User Agreement**

GOODS

**Exhibit 3 to ATSC
Certification Mark User Agreement**

RENEWAL CERTIFICATE

Name of Certified User (Company): _____

Indicate any
change to
information
on file with
ATSC

Address: _____

Company Web Site: _____

Contact Name: _____

Telephone: _____ **Facsimile:** _____

Email Address: _____

ATSC Certification Mark being renewed: _____

Effective Date of Certification Mark User Agreement: _____

Product Name: _____

Product Model Number: _____

Product Description: _____

The undersigned officer or other representative of Applicant hereby represents and warrants as follows:

- 1. The undersigned is vested by Applicant with the authority to make the representations and warranties herein on Applicant's behalf.**
- 2. Applicant has read and understands the ATSC Certification Mark Policy and the Standard associated with the Certification Mark being renewed.**
- 3. Applicant hereby certifies that the above-identified Product remains in compliance with the Standard associated with the Certification Mark.**

Signature: _____

Name: _____

Title: _____

Date: _____

**Appendix 3 to ATSC
Certification Mark Policy**

RENEWAL CERTIFICATE

Name of Certified User (Company): _____

Indicate any
change to
information
on file with
ATSC

Address: _____

Company Web Site: _____

Contact Name: _____

Telephone: _____ Facsimile: _____

Email Address: _____

ATSC Certification Mark being renewed: _____

Effective Date of Certification Mark User Agreement: _____

Product Name: _____

Product Model Number: _____

Product Description: _____

The undersigned officer or other representative of Applicant hereby represents and warrants as follows:

1. The undersigned is vested by Applicant with the authority to make the representations and warranties herein on Applicant's behalf.
2. Applicant has read and understands the ATSC Certification Mark Policy and the Standard associated with the Certification Mark being renewed.
3. Applicant hereby certifies that the above-identified Product remains in compliance with the Standard associated with the Certification Mark.

Signature: _____

Name: _____

Title: _____

Date: _____