

AUTHORIZED TESTING CENTER AGREEMENT

Parties:

ATC:	Simplay Labs, LLC.
Corporate Status:	Delaware Limited Liability Corporation
Address:	2901 Tasman Drive, Suite 113, Santa Clara, California 95054
Phone:	503-268-8000
Fax:	408-400-7375
Attention:	Simplay Operations

Adopter:	
Corporate Status:	
Address:	
Phone:	
Fax:	
Attention:	

This Authorized Testing Center Agreement (“Agreement”) is made, entered into and effective as of the later date of the signatures set forth below (“Effective Date”) by and between Simplay Labs, LLC., and its partner ATCs identified on the ATC website (http://www.simplaylabs.com/manufacturers/test_center_locations.aspx) (“ATC”) and the Adopter as set forth above. ATC and Adopter hereby agree to the following terms and conditions with respect to the services provided by the ATC.

1. Terms and Conditions. The terms and conditions of the Authorized Testing Center Terms and Conditions attached hereto as Attachment 1 are incorporated by reference and shall govern all matters relating to the services provided by the ATC, notwithstanding any other agreements between the Parties. Except as provided above, any other agreements shall remain unaffected, including without limitation the MHL Adopter Agreement (as such term is defined in Attachment 1).

2. Submission of Materials for Testing. From time to time, Adopter may contact the ATC and request to submit materials for testing to the ATC. Adopter shall do this by following the process set forth in the MHL Authorized Testing Center Ordering Instructions, located on the ATC web site (http://www.simplaylabs.com/manufacturers/MHL_Testing.aspx). ATC may modify this process at any time upon posting new MHL Authorized Testing Center Ordering Instructions on the ATC web site.

3. Export. Each party acknowledges that the products subject to this Agreement are subject to export controls, including but not limited to the U.S. Export Administration Regulations. Each Party shall therefore be responsible for being knowledgeable as to all laws, regulations and requirements regarding the export, re-export, transfer, diversion, release and/or import of product, software, and technology subject to this Agreement. Neither Party shall import, export, re-export or transfer any product, software or technology developed under or otherwise subject to this Agreement or engage in any activity in violation of any such laws, regulations or requirements of any country, including, without limitation, engaging in certain prohibited transactions with embargoed countries, denied parties, or involving nuclear, chemical/biological or missile proliferation activities or the design, development or production of rocket systems or unmanned air vehicles. The parties agree that information or products of ATC have not been specifically developed or modified for a military or space application and, furthermore, is not subject to the U.S. International Traffic in Arms Regulations (“ITAR”), nor is it engaged in the business of products modified specifically for military end-use. Further, each party represents that it’s no employees, contractors, affiliates and subsidiaries (and their employees and contractors) are not persons, entities, organizations or other such parties identified on the U.S. Department of Commerce’s Denied Persons or Entity List, the U.S. Department of Treasury’s Specially Designated Nationals or Blocked Persons Lists, or the Department of State’s Debarred Parties List, as published and revised from time to time.

WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

Simplex Labs, LLC.

Adopter

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date Signed: _____

Date Signed: _____

ATTACHMENT 1
AUTHORIZED TESTING CENTER TERMS AND CONDITIONS

1. SCOPE AND DEFINITIONS

The Authorized Testing Center Terms and Conditions (“Terms and Conditions”) apply to all services provided by or on behalf of the ATC for the MHL Adopter (“Adopter”) set forth on the cover page of the Authorized Testing Center Agreement and in accordance with the MHL ATC Testing Process set forth on the ATC website. These Terms and Conditions apply to any service provided by or on behalf of ATC. The terms “purchase” and “sale” as used herein refer to the purchase and sale of the services. These Terms and Conditions apply to Adopter and all Affiliates of Adopter (as that term is defined in the MHL Adopter Agreement).

2. ACCEPTANCE OF SERVICE ORDER BY ATC

All orders must be initiated by the submission of an on-line Service Order located at www.simplaylabs.com, together with an executed copy of the Authorized Testing Center Agreement (“Agreement”), and will not be binding on ATC until approved and accepted by ATC in writing.

3. SERVICE ADMINISTRATION

Provided that ATC receives all necessary information and equipment from Adopter, ATC will make reasonable efforts to meet the testing start times mutually agreed by the Adopter and ATC in writing. In no event shall ATC be liable for delay in delivery due to shortages in energy, components, raw materials or supplies, acts of God, labor unrest, fire, flood, terrorism, explosion, earthquake, the insufficiency or defect of any information or equipment provided by Adopter, or other event beyond its reasonable control. In the event of any such delay, the testing dates shall automatically be extended for a period equal to the time lost by reason of the delay. ATC shall not be in default for any failure to provide services to Adopter unless ATC does not begin to cure such failure within ten (10) days after receipt of written notice of failure to deliver such services from Adopter. In the event that ATC so defaults, Adopter’s sole remedy for such default shall be cancellation of the applicable Service Order. ATC shall have no other liability to Adopter as a consequence of any such default. Adopter may not cancel any Service Order for services, in whole or in part. All services furnished hereunder shall be deemed accepted by Adopter upon receipt.

4. SHIPMENT AND DELIVERY

All MHL Products will be pre-paid delivered to Adopter’s nearest ATC location. Adopter will be responsible for and will pay all packing, shipping, freight and insurance charges. Adopter is responsible for providing at the time of submission a return waybill shipping label, for return delivery when testing is complete.

5. PRICE AND PAYMENT TERMS

The prices quoted by the ATC shall be valid only for the period of time there indicated. Thereafter prices may be changed without notice. All prices are exclusive of transportation, insurance, taxes, duties and other charges related thereto, travel, communications, and other out-of-pocket charges. Such charges, when applicable, will appear as separate additional items on the invoice. No discounts whatsoever are authorized unless and until Adopter and ATC have expressly agreed in writing to a discount. Payment is due prior to any services being performed. Even after ATC’s acceptance of a Service Order, the provision of services will at all times be subject to ATC’s approval and ATC may at any time decline to provide services until receipt of payment or upon terms and conditions or security satisfactory to ATC. All overdue amounts shall bear interest at the lower of 1.5% per month or the maximum rate permitted by law. Payments due hereunder shall not be

subject to any set-off for claims by Adopter. Without limiting any other remedy at law or equity, ATC reserves the right to declare all sums immediately due and payable and to cancel any Service Order, in the event of Adopter's breach of a material obligation hereunder, including without limitation failure to comply with credit terms. All prices are quoted, and shall be paid, in US dollars.

6. TAXES

Except to the extent that Adopter provides ATC with a tax-exemption certificate acceptable in the appropriate taxing jurisdiction prior to provision of services, Adopter shall pay any present or future excise, sales, use or similar tax and other governmental charges, except for taxes based on ATC's income, and Adopter agrees to indemnify ATC against liability for payment of such taxes. Such taxes, when applicable, will appear as separate additional items on the invoice.

7. LIMITED WARRANTY

ATC warrants that the services provided by it shall be made in a professional and workmanlike manner. This limited warranty does not cover defects resulting from acts of God, labor unrest, fire, flood, terrorism, explosion, earthquake, the insufficiency or defect of any information or equipment provided by Adopter, any other event beyond its reasonable control, and/or defects in the information and products provided to ATC.

Adopter warrants at the time it issues its Service Order, accepts delivery of any services, and pays any invoice due that (a) it has legal capacity to do so; (b) there is no legal impediment to Adopter's performance of its obligations; (c) it is a signatory, or an Affiliate of a signatory, of the Mobile High-Definition Link Specification Adopter Agreement (the "MHL Adopter Agreement"); (d) each product submitted for testing shall comply with all laws; and (d) that all information and products provided to ATC shall be reasonably complete and accurate.

IF THE SERVICES DO NOT CONFORM TO THE FOREGOING WARRANTIES, ADOPTER'S EXCLUSIVE REMEDY AND ATC'S EXCLUSIVE LIABILITY FOR SUCH NON-CONFORMANCE SHALL BE AS FOLLOWS:

- (a) Adopter must first notify ATC in writing of the alleged non-conformance within thirty (30) days of the completion of the relevant services, stating the nature of such non-conformance and the circumstances surrounding its occurrence in reasonable detail, and must allow ATC a reasonable opportunity to inspect the results of such services and any information and products provided by Adopter relating to such services. Adopter shall reasonably co-operate with ATC in analyzing and curing any such defect.
- (b) If ATC determines that the services conformed with the foregoing warranty, ATC will provide Adopter with a written statement setting forth ATC's conclusion that the services were conforming, and Adopter agrees to pay ATC's reasonable cost of re-performing such services.
- (c) Upon determining that the services in question were non-conforming, ATC, at its option, may (i) re-perform the services at ATC's expense or (ii) refund the purchase price paid for such services. If after ATC re-performs such services, Adopter disagrees with the results of such services, then Adopter may request a third party Authorized Testing Center to re-perform such services. If the re-performance of such services yields results that are materially different than those produced by the ATC for the relevant product, then, upon Adopter providing ATC with documentation of such different results and of its payment of the applicable testing charges, the ATC shall pay Adopter the amounts charged to Adopter by the third party Authorized Testing Center for such re-testing.
- (d) ATC shall in no event be responsible for repair, replacement, or refund of the purchase price of any product in Adopter's distribution channels or in the possession of Adopter's customers, or any costs or losses incurred by Adopter incident to any defective

services provided by the ATC.

8. DISCLAIMER OF WARRANTIES

THE WARRANTIES SET FORTH IN THESE TERMS AND CONDITIONS ARE IN LIEU OF ALL OTHERS, AND ATC SPECIFICALLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, OR MERCHANTABILITY. NO PERSON IS AUTHORIZED TO MAKE ANY OTHER WARRANTY OR REPRESENTATION CONCERNING THE PERFORMANCE OF THE PRODUCTS OR SERVICES OTHER THAN AS PROVIDED IN THESE TERMS AND CONDITIONS. THE WARRANTIES SET FORTH IN THIS AGREEMENT SHALL EXTEND TO ADOPTER ONLY AND NOT TO ADOPTER'S CUSTOMERS OR DISTRIBUTORS.

Adopter understands that services provided by ATC do not guarantee that any product will be Fully Compliant (as such term is defined in the MHL Adopter Agreement), function correctly and/or interoperate with any other product, and that it is Adopter's sole responsibility to establish its own testing specifications, guides and reference designs to establish Fully Conformance with the MHL Specification, correct functionality and interoperability. ATC, THE MHL AGENT AND EACH PROMOTER DISCLAIM ALL WARRANTIES, RESPONSIBILITY AND LIABILITY FOR THE FULL CONFORMANCE OF ANY PRODUCT TO MHL SPECIFICATION, PRODUCT FUNCTIONALITY OR PRODUCT INTEROPERABILITY.

9. TERM

This Agreement commences on the Effective Date and unless terminated earlier in accordance with the terms of this Agreement, will remain in effect for one (1) year. This Agreement will be automatically extended for additional one (1) year terms (each a "Renewal Term") but not to exceed five (5) years, unless a party notifies the other party in writing of its intention not to renew this Agreement at least thirty (30) days prior to the expiration of the then-current Term. This Agreement shall be deemed an agreement for a fixed term regardless of the number of Renewal Terms.

10. CONFIDENTIALITY

Each party hereto desires to furnish to the other party certain information that the party furnishing such information regards as proprietary. Such information may include, but is not limited to, information of the disclosing party relating to products and product demonstrations, services, hardware design, software design, testing and manufacturing processes, business strategies and plans, customer lists, business partners and research and development programs (collectively "Confidential Information"). Confidential Information may be furnished in any tangible or intangible form including, but not limited to, writings, drawings, computer tapes and other electronic media, samples, demonstrations, video tapes and verbal communications. Any Confidential Information furnished in tangible form shall be conspicuously marked as such and the content of any verbal communication will be reduced to a writing that identifies the Confidential Information for the record within thirty (30) days of the disclosure of the Confidential Information with a copy of such writing furnished within such time period to the party receiving such Confidential Information.

All Confidential Information furnished pursuant to the Authorized Testing Center Agreement may be used solely for the purpose of providing the services (the "Business Purpose"). No other right, license or authorization, express or implied, to make, have made, or otherwise use is granted and each party agrees to be so limited with respect to all Confidential Information hereby received. All Confidential Information is provided "AS IS". All right, title, and interest in the Confidential

Information shall remain that of the disclosing party. The receiving party acknowledges that all Confidential Information is owned solely by the discloser (or its licensors).

Neither party shall disclose Confidential Information received from the disclosing party to any third party nor use such Confidential Information for any purpose other than the Business Purpose. Provided that the parties may disclose Confidential Information to the MHL Agent for purposes of establishing compliance with the MHL Adopter Agreement. The receiving party shall use the same degree of care in maintaining the confidentiality of the Confidential Information as it uses with respect to its own information that is regarded confidential and/or proprietary by such party, but in any case shall at least use reasonable care. Each party agrees that it will restrict the access of all Confidential Information to only those of its employees and consultants who have need to be informed of the Confidential Information for the purposes for which the Confidential Information is provided, which persons will be bound to the receiving party by an agreement of confidentiality that contains substantially the same obligations as contained in these Terms and Conditions.

Neither party shall be liable for any disclosure of Confidential Information or further restriction on use where: i) the same information was in the public domain at the time it was disclosed or later comes within the public domain, except through the acts or omissions of the receiving party; ii) the same information was rightfully known to the receiving party at the time of its disclosure; iii) the same information is approved for release by written authorization of the disclosing party; iv) the same information becomes known to the receiving party from a source other than the disclosing party without breach of an obligation of confidentiality; v) the same information may be accessed from products distributed without obligations of confidentiality; vi) the same information is residually retained, in non-tangible form, by persons who have had access to the Confidential Information, including ideas, concepts, know-how or techniques contained therein; or vii) the same information is independently developed by employees or representatives of the receiving party without access to the Confidential Information. A party may disclose Confidential Information pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided, however, reasonable notice is given to the disclosing party prior to disclosure under such order or requirement in order to allow the disclosing party to take steps to protect the confidentiality of such information.

Notwithstanding any termination or expiration of the Authorized Testing Center Agreement, the obligations of confidentiality set forth in these Terms and Conditions shall continue in effect for a period of one (1) year after the disclosure of such Confidential Information hereunder.

11. LIMITATIONS ON LIABILITY

IN NO EVENT SHALL ATC, MHL AGENT, OR MHL PROMOTERS BE LIABLE TO EACH OTHER, ADOPTER, AND/OR TO ANY THIRD PARTY FOR ANY PUNITIVE, EXEMPLARY, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUE, PROFITS, DATA, OR GOOD WILL THAT ADOPTER MAY SUFFER, DIRECTLY OR INDIRECTLY, ARISING OUT OF OR IN CONNECTION WITH THE PURCHASE, SALE, USE, PERFORMANCE, OR FAILURE OF THE SERVICES, WHETHER SUCH LIABILITY ARISES UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY OR OTHERWISE, EVEN IF ATC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR IF SUCH DAMAGE COULD HAVE BEEN REASONABLY FORESEEN. IN NO EVENT WILL ATC'S LIABILITY TO ADOPTER ARISING OUT OF OR RELATING TO THIS AGREEMENT AND/OR THESE TERMS AND CONDITIONS EXCEED THE AMOUNT OF THE PURCHASE PRICE PAID TO ATC BY ADOPTER FOR THE SERVICES THAT GIVES RISE TO THE CLAIM. THIS ALLOCATION OF RISK IS A MATERIAL INDUCEMENT FOR ATC TO ENTER INTO THIS AGREEMENT.

12. CONSTRUCTION; SEVERABILITY

Adopter and ATC have each had the opportunity to review, comment, and negotiate this Agreement. Adopter and ATC have each had the opportunity to hire legal counsel to assist them with respect to such review and negotiation. This Agreement is the product of both Adopter and ATC, and this Agreement shall be not be strictly construed for or against any party, but shall be construed fairly in accordance with their terms. If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid or unenforceable, it shall be upheld to the maximum extent of its legality, validity, and enforceability, and the remaining provisions shall remain in full force and effect.

13. GOVERNING LAW; JURISDICTION AND VENUE

The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of California, USA, exclusive of the body of laws known as conflict or choice of law. The U.N. Convention on Contracts for the International Sale of Goods shall not apply. The California state courts of Santa Clara County, California (or, if there is exclusive federal jurisdiction, the United States District Court of the Northern District of California) shall have exclusive jurisdiction and venue over any dispute arising out of, or in any way related to, this Agreement and Adopter hereby explicitly consents to the jurisdiction of such courts.

14. NOTICES

All notices, authorizations, and requests required to be given under this Agreement shall be deemed given (i) five (5) business days after being deposited in the U.S. mail postage prepaid, certified or registered, return receipt requested; or (ii) three business (3) days after being sent by overnight courier, charges prepaid; and addressed as set forth on the Service Order or acknowledgment, as the case may be, or to such other address as the party who is to receive the notice or request so designates by written notice to the other.

15. ENTIRE AGREEMENT, NONASSIGNABILITY, GENERAL

This Agreement sets forth herein represent the entire agreement and understanding between ATC and Adopter with respect to the subject matter hereof, and all prior quotations, invoices, negotiations, understandings, representations, and/or agreements of the parties, whether oral or written, are superseded in their entirety. ATC's failure to specifically object to any term or condition contained in any communication from Adopter shall not be deemed a waiver of this Agreement. The Adopter and ATC are independent companies and are not partners or joint ventures with each other. The exercise by any party of any remedy under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise. This Agreement shall not be modified, supplemented, qualified or interpreted by any trade usage or course of dealing not made a part of the contract by its express terms. The failure by ATC to enforce at any time any of the provisions herein, or to exercise any election or option provided herein, shall in no way be construed as waiver of such provisions or options or the right of ATC thereafter to enforce each and every such provision. Adopter hereby acknowledges that it has not entered into this agreement in reliance upon any warranty or representation by any person or entity except for the warranties or representations specifically set forth herein. ATC has no authority to modify the MHL Adopter Agreement or to otherwise legally bind any Promoter or the MHL Agent. Adopter shall not assign this Agreement, in whole or part, without the prior written consent of ATC. This Agreement has been signed by the duly authorized representatives of the parties in identical counterparts, all of which comprise but one agreement on the subject matter hereof.