



## Harmonic® ProStream® 1000 License

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Thank you.  
Harmonic

### End-User License Agreement

**IMPORTANT-READ CAREFULLY:** By using the installed firmware or using the encoder device you agree to be bound by the terms of this End-User License Agreement. If you do not agree to the terms of this agreement, promptly return this package to the place from which you obtained it.

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- 1. GRANT OF LICENSE.** This End-User License Agreement (“Agreement”) permits you to use one copy of the enclosed Harmonic firmware programs (“FIRMWARE”) for the encoder that you have purchased from Harmonic or its authorized reseller or distributor (“Licensee”). This End-User License Agreement does NOT grant you any additional rights such as those required to use the MPEG-4 AVC Standard or the MPEG-4 AAC Audio Standard.
  - 2. RESTRICTIONS.** For each device, you shall not use features or options that are not standard and require purchase of a separate license. In the event Harmonic furnishes media containing additional firmware programs, software, routines, features or functionality for which you have not purchased a license, you shall make no attempt to copy, use, or disclose such programs or routines for any purpose. The FIRMWARE may not be used on any device other than that for which this license specifies. You may not disclose, transfer, sublicense, sell, rent or lease the FIRMWARE. You may not modify, reverse engineer, decompile, or disassemble the FIRMWARE.
  - 3. UPGRADES.** If the FIRMWARE is an upgrade you may use the FIRMWARE only in conjunction with the prior version(s) of the FIRMWARE.
  - 4. COPYRIGHT.** The FIRMWARE and any accompanying printed materials are owned by Harmonic or its suppliers and are protected by United States copyright laws and international treaty provisions. You may not copy the FIRMWARE, except that you may transfer the FIRMWARE to a single hard disk provided you keep the original solely for archival or backup purposes. You may not copy the printed materials accompanying the FIRMWARE. The FIRMWARE is licensed and not sold. All rights reserved.
  - 5. DUAL-MEDIA FIRMWARE.** You may receive the FIRMWARE in more than one medium. You may not use the other medium on another system or loan, rent, lease, sell, or transfer the media to another user, nor print copies of any user documentation provided in “on-line” or electronic form.
  - 6. WARRANTY.** This FIRMWARE is warranted in accordance with Harmonic Sales Terms and Conditions (Hardware Warranty) in effect at the time of license purchase. HARMONIC AND ITS LICENSORS AND SUPPLIERS HEREBY DISCLAIM ALL OTHER WARRANTIES WHETHER EXPRESSED, STATUTORY OR IMPLIED, WHETHER ORAL OR WRITTEN, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
  - 7. COMMERCIAL ITEM - U.S. GOVERNMENT RIGHTS.** The deliverable is a “commercial item” as set forth in 48 CFR 2.101 or 48 CFR 227.7102, including the SOFTWARE which consists of commercial computer software and/or commercial computer software documentation as defined in 48 CFR 12.212 (Sept. 1995) or 48 CFR 227.7202 (June 1995), and 48 CFR 12.211 (Sept. 1995). The Government shall acquire only the same rights as customarily provided to the public. Manufacturer is Harmonic Inc., 4300 N. First Street, San Jose, CA 95134 USA.
  - 8. EXPORT RESTRICTIONS.** You agree to comply with all laws and regulations that apply to the FIRMWARE required by U.S. or other governments, including but not limited to, U.S. Export Administration Regulations and end-use restrictions in the country of destination.
  - 9. GOVERNING LAW.** This Agreement is governed by the laws of the State of California.
  - 10. SEVERABILITY.** If any portion of this Agreement is held invalid, such provision will be enforced to the maximum extent permissible, and the remaining provisions will remain in full force and effect.
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**LIMITATION OF LIABILITY.** HARMONIC’S TOTAL LIABILITY ARISING OUT OF THIS AGREEMENT WILL BE LIMITED TO THE FEE PAID BY LICENSEE FOR THE FIRMWARE LICENSE. IN NO EVENT WILL HARMONIC OR ITS LICENSORS BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR PRODUCTS, ANY LOST PROFITS OR SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE DAMAGES, OR DAMAGES UNDER ANY THEORY OF LIABILITY ARISING OUT OF THIS AGREEMENT, WHETHER BASED ON

BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT HARMONIC OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. The limitations of this section shall survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

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### **THIRD PARTY CONTENT**

Software from Harmonic third party licensors may be contained in the FIRMWARE as indicated below. Such third party licensors are third party beneficiaries of this End User License Agreement and the provisions made herein are for the benefit of, and are enforceable by Harmonic, and its licensors.

VxWorks®, Wind River Systems, Inc.  
MPEG-2 video codec, LSI Logic Corporation

THIS PRODUCT IS LICENSED UNDER THE AVC PATENT PORTFOLIO LICENSE FOR THE PERSONAL AND NON-COMMERCIAL USE OF A CONSUMER TO (i) ENCODE VIDEO IN COMPLIANCE WITH THE AVC STANDARD (“AVC VIDEO”) AND/OR (ii) DECODE AVC VIDEO THAT WAS ENCODED BY A CONSUMER ENGAGED IN A PERSONAL AND NON-COMMERCIAL ACTIVITY AND/OR WAS OBTAINED FROM A VIDEO PROVIDER LICENSED TO PROVIDE AVC VIDEO. NO LICENSE IS GRANTED OR SHALL BE IMPLIED FOR ANY OTHER USE. ADDITIONAL INFORMATION MAY BE OBTAINED FROM MPEG LA, L.L.C. SEE [HTTP://WWW.MPEGLA.COM](http://www.mpegla.com).

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ETSI  
ST Licence Agreement

## **SCRAMBLER SUBLICENCE AGREEMENT**

### **Standard Terms and Provisions**

#### **RECITALS:**

- i) The EP-DVB (all capitalized terms herein are defined in Article 1 of this Agreement) has been formed to develop a digital video broadcasting system including specifications for Scrambling Technology;
- ii) Directive 95/47/EC of the European Parliament and of the Council of 24 October 1995 on the use of standards for the transmission of television signals requires that all consumer equipment capable of descrambling digital television signals shall possess the capability to allow the descrambling of such signals according to common European scrambling algorithm administered by a recognized European standardization body ; the Scrambling Technology sublicensed hereby, together with the Common Descrambling System, is the common European scrambling algorithm referred to in such directive;
- iii) Scrambling Technology has been licensed to the Sublicensor (Harmonic Inc.) for the development, manufacture and the other activities related to Scramblers and the Sublicensor is permitted to grant sublicences for the use of the Scrambling Technology in conjunction with the Scrambler under the terms set forth herein;
- iv) The Sublicensor wishes to grant, and the Sublicensee wishes to obtain, under the terms of this Agreement, a sublicense for the use of the Scrambling Technology and the operation of the Scrambler;
- v) Before operation of the Scrambler and exploitation of the sublicense granted by this Agreement, a governmental licence, if any, shall have been obtained, for export or otherwise, in respect of the Scrambling Technology and the Scrambler for the benefit of the Sublicensee as end-user;

#### **IT IS HEREBY AGREED AS FOLLOWS:**

### **ARTICLE 1 - DEFINITIONS**

For the purpose of this Agreement, the following words shall have the meanings ascribed to them below:

- 1.1. **"Affiliate"**: any subsidiary or parent company of the Sublicensee, as well as any entity owned or controlled, directly or indirectly by the Sublicensee or by an entity owning or controlling the Sublicensee in the same way.
- Ownership or control shall exist through the direct or indirect:
- ownership of 50 percent or more of the nominal value of the issued equity share capital or of 50 percent or more of the shares entitling the holders to vote for the election of directors or persons performing similar functions, or
  - right by any other means to elect or appoint directors or persons who collectively can exercise such control.
- 1.2. **"Companies"**: the entities identified as such in Article 2.5.
- 1.3. **"Confidential Information"**: any information delivered or communicated by the Sublicensor to the Sublicensee under this Agreement or any other information of a confidential nature relating to the Scrambling Technology, made available to the Sublicensee by the Sublicensor, which is marked confidential or proprietary, or disclosed orally and identified as confidential at the time of disclosure and confirmed to be so in writing within 15 days of disclosure, or is known to be confidential. Confidential Information shall not include information that (i) is now, or later becomes, generally known to the public (other than through the fault of the Sublicensee) ; (ii) is known by the Sublicensee at the time of receipt ; (iii) is lawfully obtained by the Sublicensee from any third party who has lawfully obtained such information. The Sublicensee shall bear the burden of showing that any of the foregoing exclusions applies to any part of the Confidential Information.
- 1.4. **"Custodian"**: the European Telecommunications Standards Institute, a recognized European standards-making organization, or any replacement custodian.
- 1.5. **"DVBS"**: the digital video broadcasting systems specified by the EP-DVB for digital one-way broadcasting (including without limitation video-on-demand) as approved from time to time by the Steering Board of the EP-DVB and delivered for standardization to the competent standard-making organization.
- 1.6. **"Effective Date"**: the date on which occurs the event specified in Article 2.2.
- 1.7. **"EP-DVB"**: the European Project - Digital Video Broadcasting or, if such project cease to exist, the body succeeding to its activities.
- 1.8. **"Scrambler"**: the Scrambler identified on the face of this Agreement.
- 1.9. **"Scrambling Technology"**: the scrambling system approved, on 19 May 1994, by the Steering Board of the EP-DVB for DVBS and any modifications and improvements thereof.

## **ARTICLE 2 - SALE OF SCRAMBLER ; CONDITIONS**

- 2.1. The Sublicensor hereby grants to the Sublicensee as of the Effective Date and subject to the conditions set forth in Articles 2.2 and 2.3 a non-exclusive, non-transferable right and licence to use the Scrambling Technology (including any intellectual property rights of the Companies directly related thereto), solely in conjunction with the operation of the Scrambler in the country specified on the face of this Agreement. The licence granted hereby (including its territory, field of use and implementation), the timing and method of delivery of the Scrambler, the Effective Date, the conditions of the use or other exploitation of the Scrambler and its disposal are subject to the terms of the governmental licence, if any, required in respect of the Sublicensee and to applicable law.

- 2.2. The Sublicensee shall operate the Scrambler and use the Scrambling Technology no earlier than the date specified in the governmental licences if any, for export or otherwise, of the Scrambler, Scrambling Technology or both.
- 2.3. In consideration of the licence granted hereby and the delivery of the Scrambler, the Sublicensee shall pay to the Sublicensor the sales price specified on the face of this Agreement.
- 2.4. The Sublicensee shall use the Scrambler only for the purposes specified in this Agreement and in the governmental licence, if any, obtained for the Scrambler and Scrambling Technology. The Sublicensee shall not tamper, harm, reverse engineer, modify, decompile, disassemble or otherwise attempt to extract information from, the Scrambling Technology, the Scrambler, or any component thereof. If the Sublicensee gives notice of a compatibility or interoperability problem, the Sublicensor shall provide such relevant information as the Sublicensee may require. The Sublicensee shall make use of the Scrambler and of the Confidential Information only according to the operational guidelines from time to time delivered by the Sublicensor. The Sublicensee shall not sell, lease, lend, assign, hypothecate or grant a security interest in or otherwise dispose of the Scrambling Technology sublicensed hereby or the Scrambler to any other person except to an Affiliate (after written notice to the Custodian) or to the Sublicensor (or an entity named by the Sublicensor).
- 2.5. The Sublicensee shall not file any patent registration or claim any industrial or intellectual property right incorporating all or any part of the Confidential Information. The Sublicensee agrees that the Confidential Information and all other industrial or intellectual property rights in Scrambling Technology remain the property of Canal+ SA, Centre Commun d'Etudes de Télédiffusion et Télécommunications, Irdeto BV and News Datacom Limited (the "Companies"). The Sublicensee shall not assert any industrial or intellectual property right it owns or controls, covering any part of the Scrambling Technology or any improvement thereof, against any Company, Scrambling Technology Licensee, Sublicensor, or any other Sublicensee who is bound by the same provision as in this Article 2.5.
- 2.6. If, at any time during this Agreement, any improvement specified by the Steering Board of the EP-DVB shall become available to the Sublicensor, the Sublicensor shall, upon payment by the Sublicensee, assist in obtaining an governmental licence, if any, required for the improvement, and shall, once the governmental licence has been obtained, deliver to the Sublicensee a licence to such improvement on the terms of this Agreement on the basis of Article 2.1. In respect of any improvement, the Sublicensee shall follow any instruction that its implementation be introduced on a coordinated basis, consistent with the objectives of the EP-DVB, with all persons who have entered into agreements similar to this Agreement.

### **ARTICLE 3 - CONFIDENTIAL INFORMATION**

- 3.1 The Sublicensee agrees to keep the Confidential Information strictly confidential and shall not disclose Confidential Information to any other person except to an Affiliate or a court of law when required by a court order.
- 3.2 The Sublicensee agrees that the Confidential Information shall be used solely for the purposes specified in this Agreement and any use of the Scrambler and the Scrambling Technology shall be designed in such a way as to protect the confidentiality of the Confidential Information.
- 3.3 The Sublicensee shall disclose the Confidential Information only to its employees (who under the terms of their employment by the Sublicensee are subject to an obligation not to disclose confidential information of the Sublicensee or third parties), who have a "need to know" for the purposes specified in Article 3.2, and are made aware of the requirements of this Article 3 and Article 5.1.
- 3.4 The Sublicensee shall protect the Confidential Information with utmost care. The Sublicensee shall, at the request of either the Custodian or the Sublicensor, provide written assurances concerning the steps taken by the Sublicensee to preserve the confidentiality of the Confidential Information.
- 3.5 If the Sublicensee has notice of any unauthorized use, infringement or misappropriation of the Confidential Information or the Scrambling Technology, it shall forthwith give notice to the Custodian. The

Sublicensee shall, where required (and to the extent it would take action in respect of its own valuable patent), assist the Sublicensor or the Custodian (or any Company) in any action brought against such use, infringement or misappropriation, including being named as a party in such actions and otherwise participating in such action. The Custodian, on behalf of the Companies, and the Sublicensee shall coordinate the prosecution of any such action, including the desirability of including other parties or participants in the action. Neither the Custodian, the Sublicensor nor any Company shall be liable for (A) any claim asserted by the Sublicensee or any third party of unauthorized use, infringement or misappropriation by the Confidential Information, the Scrambling Technology or the Scrambler of any trademark, copyright, industrial or other intellectual property right or (B) any representation or warranty, implied or otherwise, as to the suitability or fitness of the Scrambling Technology or the Scrambler, for DVBS or any other application. The Sublicensee shall indemnify the Custodian, the Companies and the Sublicensor for any loss, damage or costs suffered or incurred as a result of the misuse by the Sublicensee of the Scrambling Technology or the Scrambler, or as a result of breach of this Agreement.

- 3.6. If the Sublicensee has notice of any audiovisual piracy in the forms addressed in Recommendation N° R 88 (2) or Recommendation N° R 91 (14) of the Council of Europe or other unauthorized use of the Scrambling Technology, a Scrambler, a SAM or its technology, it shall forthwith give notice to the Custodian. The Sublicensee shall assist the Companies, the other users of the Scrambling Technology and the Custodian to combat, by technical, judicial and other means, any such piracy or unlawful use, including being named as a party and otherwise participating in any judicial proceeding.
- 3.7. In no event shall Custodian, the Companies, the Sublicensor or the Sublicensee be liable to other parties for exemplary, incidental, special or consequential damages of any kind, including without limitation loss of profit, savings or revenue, or the claims of third parties, whether or not advised of the possibility of such loss, however caused and on any theory or liability, arising out of this Agreement or the relationship of the parties.

#### **ARTICLE 4 - DURATION, BREACH**

- 4.1. This Agreement shall become effective on the Effective Date and expire on the placing out of service of the Scrambler (but in any event no later than the 15th anniversary of the Effective Date). Expiration of this Agreement (or earlier termination) shall not relieve the Sublicensee of any of its obligations under Articles 2 and 3 or any governmental licence.
- 4.2. This Agreement may be terminated upon notice given by the Custodian upon the occurrence of any of the following events:
  - (i) the Sublicensee breaches any of the terms hereof, or
  - (ii) the Sublicensee engages in or authorizes any activity which could be considered as audiovisual piracy (in the forms described in Article 3.6.), or
  - (iii) any of the representations in Article 5.4 is or becomes untrue, or
  - (iv) there is a voluntary or involuntary filing of bankruptcy by, or similar event affecting, the Sublicensee, or
  - (v) the Effective Date has not occurred before the first anniversary of the signature by the Sublicensee of this Agreement;or upon the occurrence of any of the events specified on the face of this Agreement.
- 4.3. On the occurrence of termination for any reason under this Agreement, the Sublicensee shall forthwith cease its use of the Scrambling Technology, and the Scrambler and return to the Sublicensor (or to an entity designated by the Sublicensor), all Confidential Information in written, electronic or magnetic form and any copies thereof and, upon request by the Sublicensor, the Scrambler.

## **ARTICLE 5 - MISCELLANEOUS**

- 5.1. The Sublicensee may not assign or sublicense this Agreement. The Sublicensor may upon notice to the Sublicensee assign this Agreement and the rights and obligations hereunder upon notice to the Sublicensee delivered by the Sublicensor.
- 5.2. The Sublicensee agrees that, in addition to the Sublicensor, the Custodian and the Companies, jointly or severally, shall have the right to enforce this Agreement.
- 5.3. This Agreement is the only agreement between the parties on the subject matter described herein and replaces in all respects any prior agreement, written or oral, on the subject matter between the Sublicensee and the Sublicensor (except in respect of protection of confidential information).
- 5.4. The Sublicensee represents and warrants that the face of this Agreement accurately sets forth its registered office, its ultimate parent, and the location in which the Scrambler will be used and that neither the Scrambling Technology Licensee nor any Affiliate has engaged directly or indirectly in or authorized audiovisual piracy.
- 5.5. Notices to the Custodian shall be delivered to the following address:

European Telecommunications Standards  
Institute, as DVB Custodian  
Route des Lucioles  
FR - 06921 Sophia Antipolis Cedex  
France  
Fax: + 33/(0)4 93/654716

**The Custodian,**  
on behalf of the Companies,

EUROPEAN TELECOMMUNICATIONS  
STANDARDS INSTITUTE