



CERTIFICATION AGREEMENT TERMS AND CONDITIONS

In consideration of the mutual covenants in this Agreement, AmericanTCB (ATCB) or its subcontractors will perform certification inspection services to determine if Client's device(s) are in compliance with the laws, regulations and technical standards under the Scope of Accreditation of AmericanTCB.

General

ATCB retains full discretion to determine if the Devices are compliant with the Certification Regulations of the Countries. In the event that certification is not issued for the aforementioned Devices, ATCB agrees to advise Client in writing of the reasons therefore. This Agreement may not be assigned to or acquired by any other person, firm, or corporation without ATCB's written authorization. In this agreement, "Client" and "Applicant" shall have the same meaning.

1 Scope of Performance

- 1.1 The scope of performance is delineated in the Quotation or Invoicing rendered to the client.
- 1.2 ATCB may agree to accept test data from any ISO/IEC Guide 25 accredited laboratory or FCC-listed Laboratory and evaluate the Devices on the basis of this data. ATCB may also choose to accept test data from ISO Guide 25 accredited laboratories owned by Client.
- 1.3 If requested, Client shall supply ATCB, at no charge, with at least one test sample of each Device, including the necessary peripherals, connecting cables, accessories or other hardware or software (hereinafter collectively referred to as "support equipment") required for testing, evaluation, and assessment.
- 1.4 Client shall supply ATCB, at no charge, with all technical documentation and materials required for the testing, evaluation, and/or assessment of such Devices and support equipment.

Client recognizes that Device samples, including support equipment, may be damaged or completely destroyed when subjected to ATCB's testing and evaluation process. Client shall hold ATCB harmless for any such damage or destruction to its equipment.

- 1.5 Client agrees that all or part of any evaluation may be subcontracted in accordance with ISO Guide 65.

- 1.6 ATCB shall test, evaluate, and/or assess Client's equipment in accordance with its good engineering judgment, with the degree of skill and care associated with applicable, generally accepted industry standards, and in conformance with the applicable technical standards and procedures. ATCB shall comply, and cause its subcontractors to comply, with all applicable laws, regulations and orders in performing under this Agreement, and that it shall hold and comply with, all licenses, permits and approvals as may be required by applicable laws, regulations and orders in performing hereunder. If any defect or nonconformity appears in ATCB's work within thirty (30) days from the date of acceptance, Client shall notify ATCB and ATCB will promptly correct the nonconformity.
- 1.7 Where testing, evaluation, and assessment results in certification, ATCB shall certify Client's equipment as compliant with the applicable laws, regulations and/or standards within 30 business days from the date testing, evaluation, and assessment is completed. This performance may be dependent upon a timely response by the United States Federal Communications Commission (FCC) or its foreign equivalent.
- 1.8 In the event of product certification, Client may request that ATCB return or destroy Client's Device sample(s), equipment support, and technical documentation. Client shall bear all costs associated with the return or destruction of such equipment test sample(s) and support equipment.

- 1.9 The applicant agrees (ISO65 8.1.2):
- 1.9.1 To make claims only in respect of the scope for which certification has been granted
 - 1.9.2 That it does not use its product certification in such a manner as to bring ATCB into disrepute and does not make any statement regarding its product certification which ATCB may consider misleading or unauthorized
 - 1.9.3 That upon suspension or cancellation of certification, discontinues its use of all advertising matter that contains any reference thereto and returns any certification documents as required by ATCB.
 - 1.9.4 That it uses certification only to indicate that products are certified as being in conformity with specified standards
 - 1.9.5 To endeavor to ensure that no certificate or report nor any part thereof is used in a misleading manner
 - 1.9.6 That references to its product certification in communication media, such as documents, brochures or advertising, comply with the requirements of ATCB.
- 1.10 The applicant agrees (ISO65 Clause 15):
- 1.10.1 To keep a record of all complaints made known to the applicant relating to a product's compliance with the requirements of the relevant standard and to make these records available to the certification body when requested;
 - 1.10.2 To take appropriate action with the respect to such complaints and any deficiencies found in products or services that affect compliance with the requirements for certification;
 - 1.10.3 To document the actions taken.
- 1.11 Client shall notify ATCB immediately of any modifications made or planned in the design or technical construction of a Device, or of any planned or implemented changes in Client's approved quality assurance system which may render ATCB's certification inapplicable to a Device produced.
- 1.12 Client's certification is revocable for the following reasons:
- 1.12.1 ATCB is directed to revoke certification by the FCC or its foreign equivalent.
 - 1.12.2 Client instructs ATCB in writing to revoke certification for a Device. For devices certified under the FCC TCB program, this can only be performed with 30 days of the original certification.
 - 1.12.3 Client fails to pay any fees required by this Agreement.
 - 1.12.4 Client breaches any of the terms, conditions or specifications listed in the Terms and Conditions.

2 Confidentiality

- 2.1 ATCB shall not disclose to third parties any proprietary technical or financial information marked by Client as confidential without prior written consent, provided that ATCB may disclose any information or data, confidential, proprietary or otherwise, to the FCC or equivalent
- 2.2 Any documents, reports, drawings, test data, etc., made available to, produced at the request of or by ATCB may be copied and retained by ATCB if necessary to the performance of this Agreement or in compliance with the applicable Certification Regulations of the Countries. Client retains all title to any intellectual property rights in the Devices, support equipment, and technical documentation including patent, trademark, copyright and trade secret rights.

3 Invoicing

- 3.1 All payments are due in advance of the Certification effort

4 Term and Termination

- 4.1 This Agreement shall remain in force commencing until either party terminates the agreement in writing.

5 Liability

- 5.1 Client shall hold ATCB harmless and defend and indemnify ATCB against any loss, expense, liability, or damage, including reasonable attorney's fees, arising out of any personal injury or damage to property, or other action arising from Client's failure to comply with any United States or foreign laws or regulations, or which may

result from the performance, failure of performance, or operation of any equipment tested by ATCB or produced by Client in any facility inspected by ATCB. ATCB shall hold Client harmless and defend and indemnify Client against any loss, expense, liability, or damage, including reasonable attorney's fees, arising out of any personal injury or damage to property, or other action arising from ATCB's failure to comply with any United States or foreign laws or regulations, or which may result from the performance or failure of performance of ATCB under this Agreement. In no event shall ATCB's liability under this Agreement exceed the cost of its billed services to Client.

6 Disputes and Appeals

- 6.1 This Agreement shall be governed by, construed and enforced in accordance with the laws of the United States and the State of Virginia, without regard to conflict of law principles. The Parties waive trial by jury, and agree to submit to the personal jurisdiction and venue of a court of competent jurisdiction in the State of Virginia, County of Fairfax. In the event litigation results from or arises out of this Agreement, the losing party shall reimburse the prevailing party with reasonable attorney's fees, court costs, and other associated expenses, in addition to any relief to which the prevailing party may be entitled.

For the Client:

Company Name

Crossbow Technology, Inc.

Typed Name

William Fereira

Title

Program Manager

Date

09/01/04

Signature

