

## **xHE-AAC Codec Test Service**

### **Test Suite License Agreement**

#### **§ 1 Contractual Parties; Scope of Terms**

- (1) Fraunhofer Gesellschaft zur Foerderung der angewandten Forschung e.V., registered as a non-profit association at the local court of Munich (Amtsgericht München), Reg No VR 4461, Hansastrasse 27c, 80686 Munich, Germany ("Fraunhofer") is in the business of applied research and has inter alia developed certain test tools ("Test Suite"), which it licenses royalty-free to third parties ("Licensee(s)") pursuant to these terms and conditions of this license agreement ("Agreement").
- (2) This Agreement exclusively applies to the contractual relationship between Fraunhofer and Licensee regarding the use of the Test Suite, which includes Licensee's access and use of the xHE-AAC Codec Test Service webserver, upon downloading the Test Suite by Licensee.
- (3) Divergent, contradictory or supplementary standard conditions on the part of Licensee shall not become any parts of this Agreement unless Fraunhofer expressly agrees in writing that they shall apply.

#### **§ 2 Delivery and Installation, Participation and Acknowledgments of Licensee**

- (1) Fraunhofer provides to Licensee a copy of the Test Suite including user instructions, test bitstreams, and test files. The content of the Test Suite will be displayed to Licensee upon download of the Test Suite.
- (2) Licensee is responsible to procure and install any additional hardware and software which may be required for the use of the Test Suite in due time and at its own costs.
- (3) As Fraunhofer will provide Licensee with passwords and location details to access the Test Suite and related information through a specific secure https website, Licensee agrees to provide Fraunhofer with the contact details of such employees who have a need-to-know and who need access to such website. Licensee shall inform Fraunhofer immediately of any change in this respect, e.g. an employee who is no longer working for Licensee or who is no longer involved in the test project.

Data collected pursuant to this provision will be treated in accordance with Fraunhofer's Privacy Policy which can be viewed at <https://www.fraunhofer.de/en/data-protection-policy.html>

- (4) Licensee shall ensure that all website access and decryption credentials (e.g. passwords) and decrypted information provided to Licensee are only saved and stored on devices or media (e.g. computers, memory sticks, storage media, disk drives, paper documents) within Licensee's secured premises or on encrypted devices (e.g. full disk encryption, encrypted disk volume, secure memory stick or smart card) when outside Licensee's secured premises and shall advise its employees accordingly.
- (5) Licensee agrees that access by Licensee's employees to the secure https website may be logged, stored and analyzed for security and other purposes. Fraunhofer will attempt to operate the site in a commercially reasonable manner but will not be responsible for failure of the site to operate with Licensee's equipment, connectivity outage, server failure, website attack, site maintenance downtime, other service interruption or lost or stolen data or disclosure of data caused by misoperation by users or hacking of the website by third party.

- (6) Licensee agrees and acknowledges that the use of the Test Suite comprises access and use of the xHE-AAC Codec Test Service webserver which allows the upload of output files generated by Licensee's product testing by processing the Test Suite. Such output files may then be analysed by a computer program running on the xHE-AAC Codec Test Service webserver, that provides an automatic test report to Licensee whether the Licensee's uploaded output files pass the xHE-AAC Codec tests. The xHE-AAC Codec Test Service webserver retains no information about the analysis after the analysis is complete. Any use of the Test Suite, file upload, use of the computer program and the xHE-AAC Codec Test Service webserver by Licensee is upon Licensee's sole discretion.
- (7) Licensee agrees and acknowledges that the Test Suite, including but not limited to, user instructions, test bitstreams, test files, and the test reports are proprietary information of Fraunhofer and that Licensee is not allowed to disclose any such proprietary information to any third party. Further, Licensee shall not disclose (i) the test reports in whole or in parts, and (ii) the results of partially or completely unsuccessful tests, except to Fraunhofer. However, Licensee is allowed to publicly disclose the fact that its products have been successfully tested with the Test Suite, but in no event is Licensee permitted to claim any approval or endorsement by Fraunhofer of Licensee's products nor to give the impression that Fraunhofer is involved in any verification test conducted by Licensee.

### **§ 3 Granting of rights**

- (1) Pursuant to the provisions of this Agreement Fraunhofer grants to Licensee a revocable, non-exclusive, non-transferrable, non-assignable, non-fee-bearing, term-based and limited copyright license, without the right to sublicense, to (i) install, access and use the Test Suite on Licensee's premises and (ii) access and use the services of the xHE-AAC Codec Test Service webserver solely for the purpose of performing tests internally to verify the compliance of Licensee's products with the MPEG standards applicable and related to the xHE-AAC Codec in order to be entitled to obtain a license to use the xHE-AAC Trademark.
- (2) Any other use of the Test Suite by Licensee, including, but not limited to the distribution and exploitation of the Test Suite by Licensee is hereby explicitly excluded under this Agreement and shall constitute an infringement of this Agreement.
- (3) Any modification, processing, decompiling, de-assembling, reassembling, reverse-engineering or other reworking of the Test Suite as well as any replication by Licensee of results achieved by such work is strictly forbidden unless Fraunhofer provides its prior written approval to Licensee. The rights of Licensee in accordance with sect. 69d and 69e of the German Copyright Protection Act (UrhG) remain unaffected.
- (4) Fraunhofer is not obliged to provide any updates, additional or new release of the Test Suite nor any advice, support or maintenance services for the Test Suite or the xHE-AAC Codec Test Service webserver to Licensee.
- (5) Although Fraunhofer has taken reasonable scientific care in the construction of the Test Suite, Licensee understands and agrees that it may not test all aspects of compliance with the related MPEG standard, it may contain errors, and it does not test all aspects or levels of audio quality.

### **§4 Term and Duration**

- (1) The license to the use the Test Suite is limited to 90 (ninety) days starting from the download of the Test Suite. Any further use of the Test Suite is prohibited and constitutes a breach of this Agreement. If Licensee requires a longer test period,

Licensee shall register for the Download anew. In the event that Licensee wants to get a new copy of the Test Suite, re-registration for Download is required.

- (2) Fraunhofer may terminate the license if Licensee's use of the Test Suite is in breach of the Agreement.
- (3) Notwithstanding the scope of the license, Licensee is entitled to make 1 (one) copy of the Test Suite and the Test Report(s) for its (routine) IT backup purpose. Licensee is not entitled to create any further copies of the Test Suite and test report(s).

## **§ 5 Compliance with Export Control Regulations**

- (1) Licensee shall in connection with the use of the Test Suite comply with all applicable provisions of national and international export control regulations, in particular the foreign trade law regulations of the Federal Republic of Germany, the European Union and the United States of America, including an embargo (and/or other sanction).

Licensee shall indemnify and hold harmless Fraunhofer from and against any claim, proceeding, action of any public authority or third parties arising out of or relating to any non-compliance with export control regulations by Licensee, and Licensee shall compensate Fraunhofer for all losses and expenses resulting thereof, unless such non-compliance was not caused by fault of Licensee.

- (2) Where fulfilment of contractual obligations of Fraunhofer requires a permit due to national, European, United States or international foreign trade law regulations, including an embargo (and/or other sanctions), contractual performance will be subject to authorization by the competent authority. In the event that the authorization is not granted, there shall be no breach of contract or contractual obligation on Fraunhofer's part. The same applies if fulfilment of the contract should be prohibited due to the regulations cited.

Any damage compensation obligation by Fraunhofer due to delays or obstructions to performance in view of national, European, United States or international foreign trade law regulations, including an embargo (and/or other sanctions) is expressly barred. The same applies to other claims (such as repayment or guarantee claims, which are due to advance payment bonds, etc.).

## **§ 6 Limited Warranties**

THE TEST SUITE IS PROVIDED "AS IS". FRAUNHOFER SHALL NOT BE HELD LIABLE FOR THE ACCURACY OR PERFORMANCE, FITNESS FOR ANY PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OF ANY THIRD PARTIES' RIGHTS WITH RESPECT TO THE TEST SUITE.

Fraunhofer is only liable for damages that arise as a result of maliciously concealed material defects of the Test Suite by Fraunhofer. Any further liability of Fraunhofer for material defects of the Test Suite shall be excluded.

Should the contractually agreed use be impaired by third parties intellectual property rights, Fraunhofer is only liable for damages that arise as a result of maliciously concealed legal defects of the Test Suite by Fraunhofer. Any further liability of Fraunhofer for legal or technical defects of the Test Suite shall be excluded.

## **§ 7 Liability; Indemnification**

- (1) Fraunhofer shall be liable only for damages caused by wilful intent or by gross

negligence of Fraunhofer as well as for direct damages that arise from injury of life, body or health caused by the Test Suite.

- (2) In cases of slight negligence, Fraunhofer's liability shall be excluded.
- (3) Licensee shall indemnify, defend and hold Fraunhofer harmless against all claims and expenses, including legal expenses and reasonable attorney's fees, arising out of use of the Test Suite, hacking or abusive use of the website by Licensee, disclosure or infringement of copyright and claims of strict product liability.

## **§ 8 Final Provisions**

- (1) This Agreement is subject exclusively to the substantive law of the Federal Republic of Germany excluding its conflict of rules provisions and without reference to the UN Convention on Contracts for the International Sales of Goods (CISG).
- (2) Any changes and modifications to this Agreement require written form. Failure to enforce any provision of this Agreement shall not constitute a waiver of any provision of this Agreement. Waiver of any breach of any provision of this Agreement shall not be conceived as a waiver of any subsequent breach of the same or any other provision of this Agreement.
- (3) Should any of the provisions in this Agreement be or become invalid, legally void or unenforceable, in whole or in part, or contain any regulatory gap, this shall not affect the validity of the remaining provisions.