

# Open Trusted Technology Provider™ Standard (O-TTPS) Trademark License Agreement

January 2017, Revision 1.2

This Open Trusted Technology Provider Standard (O-TTPS) Trademark License Agreement ("Agreement") is made and entered into by and between the following Parties: The Open Group, L.L.C. ("The Open Group") and the entity described in the signature section of this Agreement ("Licensee"). The Open Group and the Organization are sometimes referred to herein as a "Party" or the "Parties."

## WHEREAS:

- (1) The Open Group is the proprietor of certain Trademarks.
- (2) The Licensee wishes to use said Trademarks on and in relation to the Licensee and its Scope of Certification, when such Scope of Certification meets the Standards of Quality.
- (3) The Open Group is willing to permit the Licensee to use said Trademarks as aforesaid, subject to the provisions of this Agreement.

## THE PARTIES THEREFORE AGREE as follows:

### 1. Definitions

As used in this Agreement, the terms "Agreement", "The Open Group", "Licensee", "Party" and "Parties" will have the meanings indicated above. Additional defined terms are as follows:

#### Affiliated Company

In relation to any company referred to in this Agreement, Affiliated Company shall mean:

- a. Its holding company, and
- b. Any of its subsidiaries, and
- c. Any subsidiary of its holding company.

#### Assessor

An individual or team of individuals within an O-TTPS Recognized Assessor organization who meets the criteria for performing Assessments for the O-TTPS Certification Program as specified in the O-TTPS Recognized Assessor Agreement and may perform Assessments of an Organization's Scope of Certification.

#### Certification Agreement

The agreement between the Licensee and the Certification Authority that defines the certification service to be provided and contains the legal commitment by the Licensee to the conditions of the O-TTPS Certification Program, as modified by The Open Group from time to time and made available via the Certification Authority's website.

**Certification Authority**

The organization that manages the day-to-day operations of the O-TTIPS Certification Program in accordance with the policies defined in the Certification Policy document. Authorized staff of The Open Group serve as the Certification Authority for the O-TTIPS Certification Program. The Certification Authority's website is located at <http://ottps-cert.opengroup.org>.

**Certification Package Document**

The document in which the Licensee defines the relationship between each requirement and the Evidence of Conformance; it is also where the Assessor subsequently records the assessment findings and provides the Assessment Report.

**Certification Policy**

The certification policy for the O-TTIPS Certification Program, as modified by The Open Group from time to time and set forth at <http://ottps-cert.opengroup.org> or such additional or replacement locations as provided by The Open Group.

**Conformance Requirements**

The conformance requirements for the O-TTIPS Certification Program, as modified by The Open Group from time to time and set forth at <http://ottps-cert.opengroup.org> or such additional or replacement locations as provided by The Open Group.

**O-TTIPS Recognized Assessor**

A company that has met the O-TTIPS Recognized Assessor criteria defined in the O-TTIPS Recognized Assessor Agreement, has entered into the O-TTIPS Recognized Assessor Agreement with the Certification Authority, and makes available Assessors to perform assessments of organizations for the purpose of O-TTIPS certification.

**Person**

Includes a body of persons whether or not incorporated.

**Scope of Certification**

A description by the Licensee of the products, product lines, business units, and/or geographies, which optionally could encompass the entire organization, and for which O-TTIPS certification is being applied for or has been achieved.

**Standards of Quality**

The applicable requirements set forth in the Certification Policy and Conformance Requirements of the O-TTIPS Certification Program.

**Territory**

Those countries as set out in Schedule 2, as amended from time to time in accordance with this Agreement, and any other countries in which The Open Group has rights in the Trademarks other than through registration, or any one or more of them as the context requires.

**Trademarks**

The Trademarks described in Schedule 1, whether registered or not.

**Trademark Usage Guide**

The set of rules attached as Schedule 3 hereto describing the form and manner in which the Trademarks are to be used by Licensees (subject to any specific reasonable interpretation by The Open Group in individual cases) as amended or revised from time to time by The Open Group in accordance with Clauses 5 and 18 below.

## **2. License**

### **2.1 License Grant**

In consideration of the payments to be made in accordance with Clause 8 (Fees) below and subject to Clause 4 (Standards of Quality), Schedule 3 (Trademark Usage Guide), and the other provisions of this Agreement, The Open Group hereby grants to the Licensee a non-exclusive, non-transferable (without any right to sublicense) license to use the Trademarks in the Territory on, or in relation to, a Scope of Certification, including without limitation such use in brochures and marketing materials relating to entities within such Scope of Certification.

### **2.2 License Restrictions**

Save as otherwise expressly authorized in writing by The Open Group, the Licensee shall not use the Trademarks other than in accordance with the provisions of this Agreement (including its Schedules).

## **3. Duration**

This Agreement and the licenses hereby granted shall commence on the date of counter-signature by The Open Group of this Agreement and shall, unless terminated in any of the circumstances of Clause 9 of this Agreement, continue in force:

- a. In the case of each license granted hereunder in respect of each of the Trademarks, for so long as The Open Group, its licensees, successors or its assigns continue to use the Trademark; and
- b. In the case of this Agreement, until the cessation of The Open Group's or its licensees', successors' or assigns' continued use of the last of the Trademarks.

## **4. Standards of Quality**

### **4.1 General Obligation**

The Licensee shall within the Scope of Certification comply with the Standards of Quality and the Licensee is obliged to adhere to the Certification Policy. The Licensee hereby warrants and represents that to the best of its knowledge, within each Licensee Scope of Certification, the Licensee meets the applicable Conformance Requirements.

### **4.2 Continued Compliance with the Standards of Quality**

The Licensee shall be obliged to check all changes within each Scope of Certification (whether new processes or products, process or product defect corrections, or otherwise) to ensure that within each Scope of Certification, Licensee continues to meet the Standards of Quality. In the event that Licensee ceases to be certified for a given Scope of Certification, Licensee shall at its expense immediately cease to make any use of the Trademarks on or in relation to that Scope of Certification or on or in relation to any of the products within that Scope of Certification, including but not limited to use in all existing and future websites, marketing collateral and other materials.

### **4.3 Application of Trademarks**

Pursuant to the license granted under Clause 2 above, and notwithstanding the general obligation under Clause 4.1 above, the Trademarks may only be applied in relation to Licensee's Scope of Certification and the products that are within that Scope of Certification.

#### **4.4 Certification Details to be Made Available Whenever the Trademarks are Used**

Whenever the Trademarks are displayed on or in relation to Licensee and its Scope of Certification or the products within the Scope of Certification in accordance with this Agreement, the Licensee must use the relevant attribution statement in connection with such use as prescribed in the Trademark Usage Guide.

### **5. Use of the Trademarks**

#### **5.1 Trademark Use Guidelines**

The Licensee may only use the Trademarks in accordance with the Trademark Usage Guide amended from time to time in accordance with Clause 18.

#### **5.2 Trademark Reputation**

The use of the Trademarks by the Licensee shall at all times be in keeping with their distinctiveness and reputation as determined by The Open Group as set forth in this Agreement, and the Licensee shall forthwith cease any use not consistent therewith as set forth in this Agreement.

#### **5.3 Licensee Registration of Trademarks Prohibited**

The Licensee shall not use, register, or apply to register any mark or name identical to or confusingly similar to the Trademarks in respect of any goods or services.

#### **5.4 Trademark License Limited**

Nothing contained in this Agreement shall entitle the Licensee to use or register the Trademarks as part of any corporate, business, or trading name of the Licensee, or to use the Trademarks outside the Territory.

#### **5.5 Licensee Statements**

The Licensee shall not intentionally, in any written material or otherwise, make any reference to or use of the Trademarks in such a manner as may lead the reader thereof to believe that the Licensee is licensed to apply the Trademarks outside the Scope of Certification at the time such reference is made.

### **6. Ownership of the Trademarks**

#### **6.1 Trademark Owner**

The Open Group is the proprietor or exclusive licensor of the Trademarks and of applications for registration of the Trademarks in various countries, particulars of which are available from The Open Group on request, and warrants that it has the right to grant the licenses granted hereunder. It is not aware at the date hereof that the Trademarks or the use of them on or in relation to the Licensee or its Scope of Certification or the products therein in the Territory infringes the rights of any third party but gives no warranty in relation thereto nor as to the validity of any of the applications or registrations.

#### **6.2 No Contest to Trademarks**

During the term of this Agreement and thereafter, the Licensee undertakes not to do or permit to be done any act which would or might jeopardize or invalidate the Trademarks, their applications, and/or their registrations nor to do any act which might assist or give rise to an application to remove the Trademarks from any national register or which might prejudice the right of The Open Group to the Trademarks. Furthermore, the Licensee will not object to or otherwise contest The Open Group's exclusive right, title and interest in and to, or the validity of, the Trademarks.

### **6.3 Licensee Assistance in Maintaining Trademarks**

The Licensee shall on request give to The Open Group or its authorized representative any information as to its use of the Trademarks which The Open Group may reasonably require and will (subject to the provisions of Clause 7 below), at The Open Group's expense, render any (non-monetary) assistance reasonably required by The Open Group in maintaining the applications, registrations, and/or common law rights of the Trademarks. Such information shall be subject to the provisions of Clause 12 below where applicable.

### **6.4 Goodwill of Trademarks**

The Licensee shall not make any representation or do any act which may be taken to indicate that it has any right, title, or interest in or to the ownership or use of the Trademarks except under the terms of this Agreement and acknowledges that nothing contained in this Agreement or done pursuant to this Agreement shall give the Licensee any right, title, or interest in or to the Trademarks. To the extent that any use of the Trademarks by the Licensee in any part of the Territory may result in a development of goodwill in the Trademarks in that part of the Territory, such goodwill shall inure to the sole benefit of and be on behalf of The Open Group. Upon termination of this Agreement for any reason, all rights in the Trademarks will automatically revert to The Open Group. The Licensee will at any time execute any documents reasonably required by The Open Group to confirm The Open Group's ownership of all such rights.

### **6.5 Licensee Cooperation in Recording Licenses**

Subject to the Licensee complying with its obligations under this sub-clause and Schedule 2, The Open Group may, wherever required to do so by local laws in any part of the Territory, record the Licensee as a Licensee or registered user of the Trademarks. The Licensee shall at The Open Group's request assist The Open Group as may be necessary (including by executing necessary documents including registered user agreements) for recording the Licensee as a registered user of the Trademarks in any part of the Territory, and the Licensee hereby agrees that each such recordation may be cancelled by The Open Group upon any termination of this Agreement in accordance with its terms, and that it shall assist The Open Group so far as may be necessary to achieve such cancellation including by executing necessary documents.

At the Licensee's request The Open Group shall take all necessary steps to record such licenses with the regulatory authorities in countries where such registration is required or desirable and the Licensee is responsible for reimbursing The Open Group all fees and expenses in connection therewith.

### **6.6 On-Going Trademark Registrations**

The Open Group shall, subject to the Licensee's cooperation, use its reasonable efforts to renew any registrations for the Trademarks already registered, and to procure registrations for applications of the Trademarks. The Open Group will add to the Territory any registrations of the Trademarks that are completed in additional countries. However, subject to Sub-clause 18.1 below, The Open Group may at any time remove a country from the Territory for legal or justifiable commercial reasons.

## **7. Infringements**

### **7.1 Infringements of the Trademarks**

The Licensee shall, as soon as reasonably practicable, notify The Open Group in writing if the Licensee becomes aware of any unauthorized use, or proposed unauthorized use, by any Person of a trade name, trademark, or trade dress of goods or mode of promotion or advertising, which is identical or confusingly similar to Trademarks, and The Open Group may elect, in its discretion, to

a) take action against such Person, at its sole expense, in its own name or in the name of Licensee or join the Licensee as a party (in either case, with Licensee's prior consent), as it in its sole discretion deems required, and to retain all amounts awarded as damages, profits or otherwise in connection with such action, or

b) grant the Licensee the right to take such action, at the Licensee's own expense, and by attorneys of the Licensee's choice, as the Licensee in its sole discretion may deem advisable, including the right to sue for infringement. Any such action taken by the Licensee may be taken in the name of The Open Group or the Licensee, as the Licensee deems appropriate. The monetary proceeds from any such action, claim or settlement arising from any such action, will belong exclusively to the Licensee after the deduction of all of The Open Group's own costs incurred as a result of such proceedings, if any.

Subject to the terms of this Section 7, the Licensee shall not be entitled to bring any action for infringement under any provisions of the laws of any jurisdiction enabling licensees to bring proceedings for infringement of Trademarks PROVIDED ALWAYS that nothing herein shall be deemed to remove from the Licensee any right to bring such proceedings which may not under any relevant country's laws be excluded by agreement between a licensor and licensee.

## **7.2 Infringement of Third Party Marks**

If the Licensee becomes aware that any Person alleges that the Trademarks are invalid or if either Party hereto becomes aware that any Person alleges that use of the Trademarks infringes any rights of another party, the Licensee or The Open Group, as appropriate, shall, as soon as reasonably practicable, notify the other Party. The Licensee shall make no comment or admission to any third party in respect thereof except pursuant to any judicial order binding upon it.

## **7.3 Cooperation**

The Licensee shall at the request of The Open Group cooperate with The Open Group in any action, claim, or proceedings brought or threatened in respect of the Trademarks and The Open Group shall meet any reasonable expenses incurred by the Licensee to third parties in giving such assistance. Where the Licensee requests The Open Group to bring proceedings which The Open Group would not otherwise bring in any part of the Territory, the Licensee shall be consulted at all significant stages of such proceedings and shall meet The Open Group's reasonable costs associated with the bringing of such proceedings. In the event of the successful prosecution of such proceedings The Open Group shall remit to the Licensee any resulting damages recovered by it after the deduction of all of The Open Group's own reasonable costs incurred by The Open Group to third parties as a result of such proceedings. Notwithstanding the above, it shall be at The Open Group's sole discretion whether or not any proceedings are brought or continued.

## **7.4 Products Altered Outside the Scope of Certification**

Purchasers, licensees, and other consumers of products and related materials from within the Licensee's Scope of Certification who modify such products are not permitted to use the Trademarks on or in relation to such altered products, including in any marketing materials relating thereto, whether supplied by the Licensee or by any other Person. The Licensee shall use reasonable efforts to inform purchasers, licensees, and other consumers who may be misusing the Trademarks that they may be infringing the rights of The Open Group. For the avoidance of doubt, "other consumers" includes parts of the Licensee that are outside the Scope of Certification.

## **8. Fees**

The Licensee shall pay The Open Group the required fees provided on the web-based fee schedule, as updated from time to time by The Open Group and made available at <http://ottps-cert.opengroup.org>.

All fees are quoted net of all other applicable taxes and duties that, where appropriate, will be payable in addition by the Licensee to The Open Group or to the relevant tax authorities as applicable.

## **9. Termination**

### **9.1 Termination by Either Party for Uncured Material Breach**

Either Party may terminate this Agreement without prejudice to its other remedies forthwith by notice, as required in this Agreement, in writing to the other if the other Party commits any material breach of this Agreement; provided that, if the breach is capable of remedy within ninety (90) days, the termination notice shall only be given if the Party in breach shall not have remedied the same within ninety (90) days of having been given notice in writing specifying the breach and requiring it to be remedied.

For the avoidance of doubt, persistent breach by Licensee of the Trademark Usage Guide shall constitute a material breach of this Agreement. Other examples of material breaches shall include, but are not limited to: (i) Licensee's use of the Trademarks inconsistent with the license granted under this Agreement, or otherwise contrary to the provisions of this license; (ii) Licensee's challenge to The Open Group's ownership of the Trademarks or the validity of the Trademarks; or (iii) failure of any of Licensee's products bearing the Trademarks, or marketed using the Trademarks, to meet The Open Group's Standards of Quality.

### **9.2 Termination by The Open Group**

The Open Group may immediately terminate this Agreement forthwith by notice in writing if at any time:

#### **9.2.1 Failure to Pay Fees**

Except in the case of *bona fide* dispute the Licensee fails to pay any license fees, royalties, or other payments or provide any statement required in relation to the same within sixty (60) days of notice by The Open Group of their being due; and/or

#### **9.2.2 No Longer Certified**

The Licensee ceases to be certified for at least one Scope of Certification within the O-TTPS Certification Program or does not for a period of more than one year develop, market, produce, or provide support services in connection with at least one product from within any Scope of Certification under this Agreement; and/or

#### **9.2.3 Duration Expires**

An event defined in Section 3 of this Agreement (*Duration*) as ending the duration of this Agreement occurs; and/or

#### **9.2.4 Prohibited Assignment**

Licensee makes an assignment for the benefit of its creditors, admits in writing its inability to pay its debts as they become due, commences or is the subject of any proceeding under law relating to any bankruptcy, arrangement, insolvency, or readjustments of its debt, which proceeding is not dismissed within ninety (90) days after commencement; and/or

#### **9.2.5 Legal Liability**

The Open Group determines that the Licensee's use of the Licensed Trademarks may reasonably lead to legal liability on the part of The Open Group, and The Open Group provides the Licensee with notice of Termination.

### **9.3 Termination by Licensee**

The Licensee may terminate this Agreement at any time upon three months' written notice to The Open Group.

### **9.4 Rights Upon Termination**

Upon termination of this Agreement, the license and rights granted hereunder shall terminate completely.

### **9.5 Use of Trademarks Upon Termination**

Upon the expiration or termination of this Agreement for whatever reason, the Licensee at its expense shall immediately cease to make any use of the Trademarks whatsoever, shall forthwith cause the Trademarks to be removed from all websites, sales literature, and other materials and, where necessary to achieve this, shall use its reasonable efforts to recall sales literature, and materials from partners, retailers, and other Persons (other than the ultimate customer). The Open Group may inspect any such websites, sales literature, and materials to ensure adequate removal of the Trademarks.

### **9.6 Survival of Rights and Obligations Upon Termination**

All provisions of this Agreement which in order to give effect to their meaning need to survive its termination shall remain in full force and effect thereafter. Without limiting the generality of the foregoing, the obligations of the Parties under Clauses 4, 10, 12 and 13 shall survive any termination of this Agreement.

## **10. Indemnity**

### **10.1 Licensee Obligations**

If a third party asserts a claim against The Open Group, Licensee hereby agrees, at its expense, to defend, indemnify and hold The Open Group and its respective officers, agents and employees (the "Indemnitees") harmless from such claim (whether criminal or civil, in contract, tort, or otherwise) by defending Indemnitees at Licensee's expense and paying all direct damages (including attorney's fees, court costs and expert's fees) that a court finally awards against Indemnitees or that are included in a settlement approved in advance by Licensee, provided that the claim arises out of:

- a. Allegations that Licensee's products bearing the Trademarks do not meet the Conformance Requirements (but only to the extent The Open Group has performed its obligations set forth in the Certification Agreement); and/or
- b. The misuse of the Trademarks by the Licensee or on the Licensee's behalf; and/or
- c. Licensee's failure to discontinue its use of the Trademarks pursuant to The Open Group's right to withdraw permission to use the Trademarks pursuant to this Agreement.

PROVIDED that:

- a. This Indemnity shall not apply in respect of any act done by the Licensee on the express instructions of The Open Group, and
- b. The Licensee (together with any other Licensees under the Trademarks affected by such claims) shall have the conduct of such claims but shall consult fully with The Open Group before taking any action or making any admission or settlement, which may adversely affect The Open Group's interests.



## **10.2 Interpretation**

Any provision of Sub-clause 10.1 above shall not apply in any circumstances or in respect of any liability or class of liability to the extent that it may not apply in accordance with applicable law. In the event of such a provision being held to be inapplicable or invalid, the Parties will make such amendments to this Agreement by the addition or deletion of wording, or otherwise, as to remove the inapplicable or invalid part of the provision but otherwise retain the provision to the benefit of The Open Group to the maximum extent permissible under applicable law.

## **10.3 Damages**

In no event shall The Open Group be liable for any damages, including without limitation, loss of profits, arising from or related to Licensee's use of the Trademarks or the Termination of this Agreement, even if The Open Group has notice of the possibility of such damages.

## **11. Assignment**

Neither Party shall assign, transfer, subcontract, sub-license, or in any other manner make over to any third party the benefit and/or burden of the whole or any part of this Agreement or purport to do any of the same without the prior written consent of the other not to be unreasonably refused where assignment is part of a merger, reconstruction, or transfer of business and the assignee accepts all the obligations of the Licensee or The Open Group, as appropriate, under this Agreement.

## **12. Confidentiality**

12.1 The Certification Authority shall, except where a provision of this Agreement provides otherwise, not disclose and maintain in confidence all information the Licensee discloses to the Certification Authority in relation to the O-TTPS Certification Program. No license, express or implied, under any trademark or copyright is granted by the Licensee to the Certification Authority by virtue of such disclosure and the Certification Authority shall not use any such information except for the purposes of this Agreement. The Certification Authority's obligations under this sub-clause shall be limited to taking such steps as it ordinarily takes to preserve the most important of its own confidential information, but in no case shall the Certification Authority employ less than a reasonable standard of care and discretion to avoid non-disclosure and non-use. The obligations of non-disclosure and non-use set out in this Agreement shall not apply to any item of information which:

- a. Is in the public domain at the time received by the Certification Authority or subsequently enters the public domain through no fault of the Certification Authority,
- b. Was rightfully in the Certification Authority's possession without obligation of confidence prior to its disclosure pursuant to this Agreement, or is subsequently independently developed by employees having no access to the information disclosed hereunder,
- c. Is subsequently rightfully obtained without obligation of confidence by the Certification Authority from a source other than the Licensee as evidenced by written records,
- d. Is required to be disclosed by order of any court of competent jurisdiction,

PROVIDED that no right or interest under any license, patent, or otherwise shall be acquired by the recipient of any information by virtue of the application of this clause.

12.2 Except for disclosure to the Certification Authority for the purpose of certification, information on the Licensee's assessment and any other information about the Licensee that is obtained during the assessment process shall be held confidential with the exception that the Licensee may, at their sole discretion, disclose the Assessment Report to a third party in confidence, but may not disclose the report publicly.

12.3 Information regarding the certification and assessment process, including the outcome of the assessment, shall not be disclosed in any publicly available document or to any third party by the Certification Authority or any party acting on the Certification Authority's behalf.

12.4 Prior to written notification from the Certification Authority indicating the award of certification, the Licensee shall not disclose publicly or to any third party, other than an O-TTIPS Recognized Assessor and its Assessors, any information regarding the certification process or assessment process for the declared Scope of Certification, including progress through the process, the Assessor's findings recorded in the Certification Package Document, and the Assessment Report.

12.5 The Certification Authority may disclose the Licensee's confidential information to those of its employees and contractors who reasonably require access to such information. Unless expressly prohibited elsewhere in this Agreement or in the Certification Policy, the Certification Authority may disclose the Licensee's confidential information to the Licensee's contracted O-TTIPS Recognized Assessor and its Assessors. The Certification Authority may also disclose the Licensee's confidential information to any third party acting on behalf of the Certification Authority and who reasonably requires access to such information. The Open Group will execute an agreement with such third party, which will include confidentiality terms equivalent to those appearing in this Clause 12, prior to sharing any of the Licensee's confidential information with the third party. However, the Certification Authority may not disclose the Licensee's confidential information to any employee of a member company in The Open Group, unless another exception to the obligations under this sub-clause applies. For the avoidance of doubt, the Certification Authority may disclose the Licensee's confidential information to the Licensee's employees, or employees of any party acting on the Licensee's behalf.

12.6 To enable the Licensee to keep the fact of certification confidential for a period of up to six (6) months from the date of written notice by the Certification Authority that certification has been achieved (the "Delayed Listing Period"), the Licensee's identity and the fact of certification will be kept confidential subject to the disclosure and use restrictions set out in this clause. During this period, the Licensee may not publicly claim that it is or has been certified, use the Trademarks, or make any representation of conformance to the O-TTIPS or the Program's Conformance Requirements without first informing the Certification Authority that the Delayed Listing Period has expired. Certification information will cease to be held confidential upon the earlier of notice by the Licensee that the Delayed Listing Period has expired or at the end of the six-month period, provided that the Licensee has not requested withdrawal and deletion of such information.

### **13. Export Restrictions**

The Licensee agrees with respect to its usage of the Trademarks to comply with all applicable treaties, laws, and/or regulations, including but not limited to any applicable import or export laws. The Licensee will be responsible for conducting its activities under this Agreement in compliance with such laws.

### **14. Entire Agreement**

This Agreement including its Schedules and documents referred to therein, including, but not by way of limitation, the Certification Policy and O-TTIPS Certification Agreement, constitute the entire agreement

and understanding of the Parties relating to the subject matter of this Agreement and supersede all prior oral or written agreements, understandings, or arrangements between them relating to such subject matter. For the avoidance of doubt, this Agreement supersedes any agreement between The Open Group and the Licensee in respect of the O-TTPS Certification Program, but does not supersede any agreement in respect of other certification or compliance programs.

Neither Party shall be entitled to rely on any agreement, understanding, arrangement, or representation relating to the subject matter of this Agreement which is not expressly contained in this Agreement and, subject to Clause 18, no change may be made to this Agreement except in writing signed by duly authorized representatives of both parties.

Nothing in this Agreement affects the application of any other Agreement between The Open Group and the Licensee (including, without limitation, any membership agreement).

## **15. Waiver of Rights under this Agreement**

No failure or delay on the part of either of the Parties to exercise any right or remedy under this Agreement shall be construed or operate as a waiver thereof nor shall any single or partial exercise of any right or remedy preclude the further exercise of such right or remedy as the case may be.

## **16. Notices**

Any notice or other document to be given under this Agreement, except in circumstances specifically providing for notices by electronic mail, shall be in writing in the English language and sent by post or by email to the addresses set out in this Agreement or such other address as either Party shall notify to the other in writing for this purpose. Notices shall be deemed to be effective upon receipt by the Party to which notice is given or within the 5<sup>th</sup> day following the mailing or transmission, whichever occurs first.

## **17. Interpretation**

### **17.1 Headings**

The headings in this Agreement are inserted only for convenience and shall not affect its construction.

### **17.2 Singular and Plural Words**

Where appropriate words denoting the singular only shall include the plural and *vice versa*.

## **18. Schedules**

### **18.1 Amendment of Schedules**

Subject to any express limitations set out therein, the Schedules to this Agreement may be amended by The Open Group from time to time, consistent with the processes established by The Open Group, as follows:

- Schedule 1 (Trademarks) will be amended from time to time to reflect the addition and/or removal of a trademark.
- Schedule 2 (Territory). Countries will be added on application for and completion of the registration of the Trademarks in such additional countries. Deletions of countries may be made for legal or reasonable commercial reasons and the Licensee will be notified of each such deletion accordingly.

- Schedule 3 (Trademark Usage Guide) will be held as stable as possible in order to protect the Licensees' investment.

Unless otherwise agreed, amendments shall take effect three (3) months after they are communicated in writing to the Licensee.

### **18.2 Consequences of Amendment of the Trademark Usage Guide**

If The Open Group amends the Trademark Usage Guide, the Licensee is not required to alter and may continue to use any label, written material, advertising material, promotional material, or other item already produced in the normal course of business for sale or distribution prior to the effective date of Licensee's notice of such amendment.

## **19. Governing Law and Jurisdiction**

The validity, construction, and performance of this Agreement shall be governed by the laws of the Commonwealth of Massachusetts and shall be subject to the non-exclusive jurisdiction of the Massachusetts courts, except that proceedings to the extent only that they relate to the validity or enforcement of any of the Trademarks in any part of the Territory shall be governed by the law and procedures of that part of the Territory.

## **20. Compliance with Local Requirements**

If in any jurisdiction the effect of any provision of this Agreement or the absence from this Agreement of any provision would be to prejudice the Trademarks or any remedy under the Trademarks, the Parties will make such amendments to this Agreement and execute such further agreements and documents limited to that part of the Territory which falls under such jurisdiction as may be necessary to remove such prejudicial effects.

## **21. No Joint Venture**

Nothing contained in this Agreement shall be construed as creating any agency, partnership, or other form of joint enterprise between the Parties. The relationship between the Parties shall at all times be that of independent contractors. Neither Party shall have authority to contract for or bind the other in any manner whatsoever.

## **22. Severability**

If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law, all remaining provisions of this Agreement shall remain in full force and effect.

**23. Execution**

AGREED by the Parties through their authorized signatories:

FOR AND ON BEHALF OF

FOR AND ON BEHALF OF

\_\_\_\_\_  
**The Organization**

**The Open Group**

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

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Burlington, MA 01803, U.S.A.

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Please complete and email (scanned/ PDF) or fax a signed copy of this document to legal@opengroup.org. The Open Group will countersign and return a fully executed copy to the email address or fax number provided above. If preferred, you may just complete, sign and send this signature page.  
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## SCHEDULE 1: THE TRADEMARKS

The Open Group Certification Logo shown in the sample below and any of its component parts.



The Open Group Certification Logo is a combination of The Open Group Certification Mark, “The Open Group”, “Certified”, a separator bar, and the Label used to indicate i) the tier of certification achieved, ii) the requirements against which Licensee is certified, and iii) optionally the equivalency of O-TTPS 1.1 with ISO/IEC 20243:2015.

The Trademarks may only be used in accordance with the Trademark Usage Guide (Schedule 3).

## SCHEDULE 2: THE TERRITORY

### Registrations and Applications

Country	Mark	Class	Status	Registration No.
CTM (Community Trademark) - EC	The Open Group Certification Mark Stylized 'O'	9, 16, 42	Registered	3289527
Canada	The Open Group Certification Mark Stylized 'O'	9, 16, 42	Registered	TMA 641229
Japan	The Open Group Certification Mark Stylized 'O'	9, 16, 42	Registered	4801548
Australia	The Open Group Certification Mark Stylized 'O'	9, 16, 42	Registered	963403
USA	The Open Group Certification Mark Stylized 'O'	9, 41, 42		
USA	The Open Group	9, 16, 41, 42	Registered	2414249
CTM (Community Trademark) -EU	The Open Group	9, 16, 41, 42	Registered	354456

## SCHEDULE 3: TRADEMARK USAGE GUIDE

### 1. Using Trademarks

#### 1.1 Introduction

Trademarks are amongst the most valuable assets of any organization.

Trademarks are important because they:

- Identify and distinguish a product or service
- Serve as an assurance of consistency of the quality of a product
- Assist in advertising and promoting a service or product

Unlike rights derived from patents and copyrights, which provide protection for only a limited number of years, Trademark rights can last forever. Trademark rights can also be lost forever. The exclusive right granted in a Trademark is usually lost as a result of careless or improper use, usually by allowing the mark to be used as generic or descriptive words for products. All of the following were once valuable Trademarks in the U.S.A.: aspirin, escalator, cellophane, zipper, shredded wheat, corn flakes, and kerosene. All became common or generic words because their owners did not use them carefully and correctly and did not prevent the improper use of them by others.

This Guide describes the rules for the use of Trademarks set out in Schedule 1. It is designed to be a practical guide to practitioners.

#### 1.2 Legal Status

This Guide forms Schedule 3 of The Open Group O-TTPS Trademark License Agreement. It forms an integral part of the Agreement and should be read in conjunction with it.

The Agreement defines the conditions and technical criteria that must be fulfilled before the Licensee may make use of the Trademarks. This Guide defines the permitted visual presentation, form, and manner in which the Trademarks can be used by a Licensee who complies with those conditions and technical criteria. Failure to comply with the mandatory provisions of the Guide constitutes a breach of the Agreement, but the Licensee shall use its most reasonable efforts to comply with all the provisions herein.

The only circumstances in which the Trademarks may be used are:

- Use as a Certification Logo on or in relation to Licensee and its Scope of Certification.

**Of itself, this Guide does not grant permission to use any Trademark.**

#### 1.3 Use of Trademarks by Third Parties

There are circumstances where, for example, in referring to a Trademark in editorial or articles, the use of a Trademark is either desirable or unavoidable. Such use of Trademarks is permitted, without the requirement for the user to be licensed, provided that the rules in this Guide are followed.

There are instances where a third party may wish to use a Trademark to promote the sale of products that are within Licensee's Scope of Certification. Such uses are permitted under the same principles as are required of licensed users, provided the third party maintains the distinctiveness of the Trademark and that there is no likelihood of confusion between products within the Scope of Certification and products outside of the Scope of Certification or compromise of any Trademark.



## 2. Trademark Rules for Proper Usage

### 2.1 Use in Text and Descriptive Materials

Licensees are encouraged to use the following example to refer to Licensee in textual materials.

- “<Licensee>’s <reference for Scope of Certification> is certified under The Open Group O-TTIPS Certification Program <certification tier: Self-Assessed or Third-Party Assessed> tier for O-TTIPS and ISO/IEC 20243:2015.”

A Trademark whenever and wherever it appears in print must be distinguished from the surrounding text. This applies to all forms of printed media, including advertising copy, product packaging, brochures, manuals, internal memoranda, editorial, articles, correspondence, overhead projector slides, and presentation materials, and to web pages and computer video screens.

The graphical design of the Trademark (the “Certification Logo”) must be strictly adhered to. The Trademark must always be used with white space (see Sub-clause 4.3) around it and must never be superimposed on or used in association with other graphics or Trademarks.

You should always mark the first or most significant occurrence of the Trademark as appropriate and must place the required attribution as a footnote. The attribution should use the ® symbol for a registered Trademark and the ™ symbol for an unregistered Trademark. It is acceptable to use an asterisk in place of the Trademark symbol where the medium used (for example, electronic mail) cannot reproduce the ® or ™ symbols. However, this is not intended to authorize use of the asterisk as the norm.

You may translate the Trademark attribution to national language(s).

The Trademark attribution is important as it reminds competitors, licensees, customers, and others that The Open Group claims exclusive rights in the marks.

Blanket or generic attributions are not acceptable, such as:

- “All Trademarks are the property of their respective owners.”

The correct attributions are:

- “The Open Group Certification Mark and Open Trusted Technology Provider are trademarks and The Open Group is a registered trademark of The Open Group.”

The following *additional* attribution (see below) is required when reference is made to a Trademark or a Trademark is used on and in relation to Licensee and its Scope of Certification or products from within the Scope of Certification.

- “<Licensee>’s <reference for Scope of Certification> is certified under The Open Group O-TTIPS Certification Program <certification tier: Self-Assessed or Third-Party Assessed> tier and meets the requirements of the Open Trusted Technology Provider™ Standard <version of O-TTIPS to which Licensee is certified> and ISO/IEC 20243:2015.”

This Attribution is required so that a reader may always easily identify the requirements to which Licensee is warranted to conform.

The first occurrence of the product name linked with a Trademark should be asterisked and the attribution above used after the Trademark attribution.

### 3. Graphical Representation of the Trademarks

#### 3.1 The Certification Logo



#### 3.2 Transition from a Previous Certification Logo

Where a Licensee is already using a previous version of the Certification Logo in respect to Licensee's Scope of Certification, the Licensee may continue such use in the short term. However, the Licensee should transition to use of the Certification Logo set out in Paragraph 3.1 above (in lieu of the previous Certification Logo) as soon as possible.

#### 3.3 Use of the Certification Logo in Advertisements

All use of the Certification Logo in advertisements, display boards, promotional material, and product catalogs must be in relation to Licensee's Scope of Certification or products from within the Scope of Certification. If an advertisement, document, or other material refers both to products within and outside the Scope of Certification, the Certification Logo must not be used in such a way as to suggest that all the products being advertised are covered by Licensee's certification by The Open Group. If the material refers to an organization or parts of an organization, the Certification Logo must not be used in such a way as to suggest that the entire organization or parts of the organization are covered by the Licensee's certification by The Open Group, if they are not.

#### 3.4 Use of the Certification Logo on Software Products

The Licensee is permitted (and encouraged) to use the Certification Logo on and in relation to products from within the Scope of Certification:

- On the packaging of the software and its media
- In manuals for the software

The Licensee may use a translation of this statement where to do so would be compatible with the language used for the product.

#### 3.5 Use of the Certification Logo on Hardware

The Licensee is permitted to use the Certification Logo displayed on the case or other visible parts of a hardware device when that device is from within the Scope of Certification. The Licensee is permitted to use the Certification Logo displayed on the case or other visible parts of a hardware device if such device is loaded with a product or component that is from within the Scope of Certification, as long as it is clear that the Certification Logo applies only to that product or component. The Trademark may be permanently fixed to such hardware only when a product or component from within the Scope of

Certification is embedded within the hardware in such a way that it can only be modified or replaced under the control of the Licensee.

## **4. Other Conditions for Use of Trademarks**

### **4.1 Combination of Trademarks in Product Names**

The Trademark may be used in conjunction with a product name only with the prior written permission of The Open Group.

Comprehensive examples of proposed usage and any graphic representation must be submitted with the request to The Open Group.

### **4.2 Colors for Trademarks**

The color references refer to the International Pantone Matching System for printing purposes. Whenever colors are used in the Trademarks, they must be accurately matched to the standard. Colors must never be applied to the Trademarks as a screen or a tint.

The standard colors for the Trademark are Blue PMS 634 and Green 341.

Color reproduction is preferred and should be applied where practicable. The specified PMS color must be used in logo reproductions as far as the printing or rendering process allows.

A black-only certification mark is to be used only when color output options are not available.

### **4.3 General Conditions**

The Certification Logo must always appear in the colors and font specified, and should never be altered in any way except it may be reduced in size. In order to ensure the legibility of the Certification Logo, the minimum recommended size is 25 mm, or 1 inch in length for print, and 120 pixels for web/html use. The Certification Logo should stand alone and must always be surrounded by a generous amount of space. It must not be enclosed within a contrived shape or used as part of another symbol or name (except as prescribed in Paragraph 4.1 above)

The Certification Logo must not be juxtaposed to other symbols or text in such a way as to show a connection with them.

For purposes of protecting the Trademarks and their registration, The Open Group would like to receive from the Licensee a copy of the final published form of materials on which the Trademarks are used.

To change a logo beyond the provided dimensions, or for additional information, contact The Open Group by electronic mail at [trademarks@opengroup.org](mailto:trademarks@opengroup.org).