

The Open Group O-TTPS Recognized Assessor Trademark License Agreement (TMLA)

January 2017, Revision 1.1

This O-TTPS Recognized Assessor 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").

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's O-TTPS Assessment Services when such services meet 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" will have the meanings indicated above. Additional defined terms are as follows:

Certification Authority

The organization that manages the day-to-day operations of the Open Trusted Technology Provider™ Standard (O-TTPS) Certification Program in accordance with the policies defined in the O-TTPS Certification Policy document. Authorized staff of The Open Group serve as the Certification Authority for the O-TTPS Certification Program.

Certification Policy

The certification policy for the O-TTPS 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 O-TTPS Conformance Requirements relating to the O-TTPS 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.

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.

Assessment Procedures

The assessment procedures for the O-TTPS 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

Organization

A vendor, provider, supplier, or integrator that is interested in applying for certification, has applied for certification, or that has achieved certification in the O-TTPS Certification Program.

O-TTPS Assessment Services

The assessment services provided by Licensee, in accordance with the O-TTPS Recognized Assessor Agreement, to an Organization applying to achieve O-TTPS certification.

O-TTPS Recognized Assessor

The Licensee that has met the O-TTPS Recognized Assessor criteria defined in the O-TTPS Recognized Assessor Agreement, has entered into the O-TTPS Recognized Assessor Agreement with the Certification Authority, and makes available Assessors to perform assessments of Organizations for the purpose of O-TTPS certification.

O-TTPS Recognized Assessor Agreement

The agreement that the Licensee has entered into with The Open Group whereby the Licensee agrees to be bound by the terms therein, the Certification Policy, and the Assessment Procedures.

Person

Includes a body of persons whether or not incorporated.

Standards of Quality

The requirements set forth in the O-TTPS Recognized Assessor Agreement that Licensee has entered into with The Open Group.

Territory

Those countries as set out in Schedule 2, Paragraph 3, 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, their O-TTPS Assessment Services, including without limitation use in brochures and marketing materials relating to their O-TTPS Assessment Services.

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 or its licensees', successors' or assigns'

continued use of the last of the Trademarks.

4. Standards of Quality

4.1 General Obligation

All O-TTPS Assessment Services provided, directly or indirectly, by the Licensee under or by reference to the Trademarks shall comply with the Standards of Quality, and the Licensee is obliged to adhere to the O-TTPS Recognized Assessor Agreement. **The Licensee hereby warrants and represents that all of their O-TTPS Assessment Services provided and any individuals used in provision of such services meet the applicable requirements identified in the O-TTPS Recognized Assessor Agreement.**

4.2 Continued Compliance with the Standards of Quality

The Licensee shall be obliged to check all changes to their O-TTPS Assessment Services (whether defect corrections or otherwise), to ensure that all of their O-TTPS Assessment Services continue to meet the Standards of Quality. In the event that Licensee ceases to qualify as an O-TTPS Recognized Assessor, License shall at its expense immediately cease to make any use of the Trademarks whatsoever, including but not limited use in all existing and future websites and marketing collateral 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 to O-TTPS Assessment Services.

4.4 Recognition Details to be Made Available Whenever the Trademarks Are Used

Whenever the Trademarks are displayed on or in relation to O-TTPS Assessment Services 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 Guide

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, trading, or domain 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 to any service other than O-TTPS Assessment Services at the time such reference is made.

6. Ownership of the Trademarks

6.1 Trademark Owner

The Open Group is the proprietor of the Trademarks and of applications for registration of the Trademarks in

various countries, 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 O-TTPS Assessment Services 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) 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, 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 immediately 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, 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 immediately 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 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 costs incurred 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.

8. Fees

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

All fees are quoted net of all other applicable taxes and duties which, where appropriate, will be payable to The Open Group (or to the relevant tax authorities as applicable) by the Licensee in addition, in accordance with the terms of the O-TTPS Recognized Assessor Agreement.

9. Termination

9.1. Termination of the O-TTPS Recognized Assessor Agreement

Termination of the O-TTPS Recognized Assessor Agreement that Licensee has entered into with The Open Group shall immediately cause termination of this Agreement.

9.2 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 the Licensee's certification program bearing the Trademarks, or marketed using the Trademarks, to meet The Open Group's Standards of Quality.

9.3 Termination by The Open Group

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

9.3.1 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 their being due; and/or

9.3.2 No Assessment Services

The Licensee does not for a period of more than one year provide O-TTPS Assessment Services under this Agreement; and/or

9.3.3 Duration Expires

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

9.3.4 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 sixty (60) days after commencement; and/or

9.3.5 Legal Liability

The Open Group determines that the Licensee's use of the 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.

9.4 Termination by Licensee

The Licensee may terminate this Agreement at any time upon three (3) months' written notice to The Open Group.

9.5 Rights Upon Termination

Upon termination of this Agreement, the license and rights granted hereunder shall terminate completely and all rights shall revert to The Open Group.

9.6 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, and shall forthwith cause the Trademarks to be removed from all websites, sales literature and collateral marketing materials and, where necessary to achieve this, shall use its reasonable efforts to recall sales literature, and collateral marketing materials bearing the Trademarks from partners 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.

9.7 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

The Licensee hereby agrees, at its expense, to defend, indemnify and hold The Open Group and its respective officers, agents and employees harmless from any and all third party claims, demands, causes of action, judgments and liability (whether criminal or civil, in contract, tort, or otherwise) for losses, damages (including without limitation direct, indirect, and consequential damages and loss of profits, production, use, and contracts), settlements and costs (including attorney's fees, court costs and expert's fees) arising out of:

- a. Licensee's advertising, promotion of the O-TTPS Assessment Services bearing the Trademarks; and/or
- b. The use or misuse of the Trademarks by the Licensee or on the Licensee's behalf; and/or
- c. Any decision taken by The Open Group or its officers, agents or employees in accordance with this Agreement refusing or withdrawing permission to the Licensee to use the Trademarks on or in relation to any O-TTPS Assessment Services, and the disclosure of any such decision to any Person.

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 Confidential Information

The Open Group shall, except where a provision of the Agreement provides otherwise, maintain in confidence all information disclosed to it under or in relation to this Agreement by the Licensee, which is in writing marked "confidential" or, if oral or visual, is identified as confidential at the time of disclosure and reduced to writing marked "confidential" and sent to The Open Group within thirty (30) days thereafter, and shall not use any such information except for the purposes of this Agreement. The Open Group'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.

12.2 Non-Confidential Information

The obligations of non-disclosure and non-use set out in Sub-clause 12.1 above shall not apply to any item of information which:

- a. Is in the public domain at any time (but without prejudice to any Person's rights of action against another Person who wrongfully causes or permits such information to be in the public domain),
- b. Was rightfully in a Person's possession without obligation of confidence prior to its disclosure pursuant to this Agreement, or is subsequently independently developed by that Person by employees having no access to the information disclosed hereunder,
- c. Is subsequently rightfully obtained without obligation of confidence by a Person 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 or to enable the Trademarks or any license thereunder to be validly registered or notified in any part of the Territory or otherwise to protect the validity of the Trademarks,

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 sub-clause.

12.3 Survival of Confidentiality Obligations

The obligations of non-disclosure, and the limitations on use, set out in Sub-clause 12.1 above, shall survive termination of this Agreement but subject to Sub-clause 12.2 above.

12.4 Limited Disclosure

The Open Group may disclose the Licensee's confidential information to those of its employees who reasonably require access to such information. For the avoidance of doubt, The Open Group may disclose the Licensee's confidential information to employees of the Licensee.

13. Export Restrictions

The Licensee agrees with respect to its usage of the Trademarks and provision of O-TTPS Assessment Services 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 O-TTPS Recognized Assessor 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.

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 5th 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

ACCEPTED AND AGREED TO:

FOR AND ON BEHALF OF

Licensee _____

Signed

Name

Title

Date

Facsimile Number: _____

Email: _____

Address: _____

FOR AND ON BEHALF OF

The Open Group

Signed

Name

Title

Date

Facsimile Number: +1 240 250 6102

Email: legal@opengroup.org

800 District Avenue, Suite 150

Burlington, MA 01803, U.S.A.

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.

SCHEDULE 1: THE TRADEMARKS

The O-TTPS Recognized Assessor logo shown in the sample below and any of its components parts.



The O-TTPS Recognized Assessor logo is a combination of The Open Group Certification Mark, “The Open Group”, “Recognized Assessor”, separator bar, and the tag line “Open Trusted Technology Provider™ V1”.

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 O-TTIPS Recognized Assessor logo 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-TTIPS Recognized Assessor 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 O-TTIPS Recognized Assessor mark. This Guide defines the permitted visual presentation, form, and manner in which the O-TTIPS Recognized Assessor logo 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 an O-TTIPS Recognized Assessor mark on or in relation to O-TTIPS Assessment Services.

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.

For the avoidance of doubt, the Trademark may not be used by Assessors, employed or contracted, acting on behalf of the Licensee.

2. Trademark Rules for Proper Usage

2.1 Use in Text and Descriptive Material

Licensees are encouraged to use one of the following examples to refer to O-TTIPS Assessment Services in textual materials.

- “<Licensee> is a Recognized Assessor for the Open Trusted Technology Provider™ (O-TTIPS) Certification Program.”
- “<Licensee> is an Open Group O-TTIPS Recognized Assessor.

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 computer video screens.

The graphical design of the Trademark 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 an O-TTPS Recognized Assessor or the Trademark is used on or in relation to its O-TTPS Assessment Services.

“<Licensee> is a Recognized Assessor within The Open Group O-TTPS Certification Program.”

The first occurrence of the O-TTPS Assessment Service 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 O-TTPS Recognized Assessor Logo



3.2 Use of the O-TTPS Recognized Assessor logo in Advertisements

All use of the **O-TTPS Recognized Assessor logo** in advertisements, display boards, promotional material, and product catalogs must be in relation to O-TTPS Assessment Services. If an advertisement, document, or other material refers both to O-TTPS Assessment Services and to non- O-TTPS Assessment Services; the O-TTPS Recognized Assessor logo must not be used in such a way as to suggest that the non- O-TTPS Assessment Services being advertised are recognized by The Open Group.

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 or service 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 color(s) for the Trademark is (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 O-TTPS Recognized Assessor 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 O-TTPS Recognized Assessor logo, the minimum recommended size is 25 mm, or 1 inch in length for print, and 120 pixels for web/html use. The O-TTPS Recognized Assessor 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 O-TTPS Recognized Assessor 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.