

OPC FOUNDATION COMPLIANCE LOGO LICENSE AGREEMENT

THIS AGREEMENT is between OPC Foundation, (“FOUNDATION”) a non-profit corporation of Minnesota, having a principal office at 16101 N. 82nd Street, Scottsdale, Arizona 85260 and _____ (“COMPANY”) having a principal office at _____, a member of the OPC Foundation.

WHEREAS, the FOUNDATION owns the OPC Foundation compliance logo marks (“LOGOS”) shown in EXHIBIT A, which are used only by its members to identify computer software products that have been tested and certified under the standards and specifications established by the FOUNDATION.

COMPANY desires to use the LOGOS and FOUNDATION desires to license to COMPANY the rights to use the LOGOS subject to the following terms and conditions.

NOW, THEREFORE, in consideration of the promises and agreements set forth herein, the Parties each intending to be legally bound hereby, do promise and agree as follows:

1. **LICENSE.** FOUNDATION hereby grants to COMPANY for the Term of this Agreement the nonexclusive right to use the LOGOS worldwide solely for the limited purpose identified herein, and solely in association with the software products identified in EXHIBIT B (“Products”).
2. **USE OF LOGOS.** COMPANY agrees to use the LOGOS only with the Products, identified in EXHIBIT B, as long as it meets the FOUNDATION’s technical and procedural compliance-testing standards and has gone through the compliance-testing process. For every new product or new version of the Products, COMPANY must pass the compliance-testing process and complete a new Agreement for authorization to use LOGOS with products other than Products identified in EXHIBIT B. Further:
 - a. COMPANY agrees that it shall not modify the LOGOS or combine it with another mark, or register any marks confusingly similar to the LOGOS.
 - b. COMPANY agrees to ensure that use of the LOGOS are not detrimental or harmful to FOUNDATION and does not damage the goodwill in the LOGOS.
 - c. COMPANY agrees to ensure that the LOGOS are used in a manner which significantly distinguishes it from any surrounding adjacent text or other logos. The size and placement of the LOGOS must emphasize clearly that the COMPANY is an independent entity and not associated with the FOUNDATION in any manner other than being a member of the FOUNDATION.

- d. COMPANY agrees that the LOGOS may not be included in or on any product, trade dress, design or service name that is not compliance-tested and verified as compliance-tested by FOUNDATION. The LOGOS awarded to a company for its products, may be displayed on a company related WEB site or documentation that does not directly reference any products. The LOGOS may not be displayed in any manner that could imply that products other than the compliance-tested product have been compliance-tested.
 - e. COMPANY agrees to use the standard text found in EXHIBIT C on the packaging of its Products, by displaying the text near the LOGOS to identify the OPC specifications for which the Products have been compliance-tested.
 - f. COMPANY agrees to ensure that all of its advertising, web sites, promotional and other materials which bear the LOGOS display a legend in a sufficiently prominent place indicating that the LOGOS are “the property of The OPC Foundation and are used under license.”
 - g. COMPANY agrees to use the LOGOS only as provided by FOUNDATION. The LOGOS may not be altered in any manner. The LOGOS must include a TM symbol (or ® symbol once registered) as part of the LOGOS. See Exhibit A for actual samples of how the LOGOS must be used.
 - h. COMPANY agrees that, when using the LOGOS as contemplated by this Agreement, including, but not limited to, in all advertising and promotional materials, such use shall meet the quality standards specified by FOUNDATION. COMPANY agrees to use original, unblemished versions of the LOGOS in all instances.
3. **TERM OF THE AGREEMENT.** This Agreement and the license granted hereunder shall commence on the date of execution by both Parties and shall expire on _____, three (3) years from the date of the oldest test used to qualify. For an extended use of the LOGOS beyond this term, the COMPANY must re-apply and sign another Agreement. In addition, for each test tool whose major version has changed since the last time the product has been tested, that test will need to be run again to re-qualify.
 4. **COMPENSATION.** COMPANY shall pay the FOUNDATION a licensing fee of US \$10 for each logo use agreement executed. Full payment of all the requisite fees is required prior to signing the logo use agreement. This payment is waived for OPC Foundation Corporate Members in good standing.
 5. **INTELLECTUAL PROPERTY RIGHTS.** COMPANY acknowledges FOUNDATION’s exclusive rights in the LOGOS and further acknowledges that the LOGOS are distinct, unique and original and that FOUNDATION is the sole owner thereof. FOUNDATION shall have absolute determination and control, in its sole discretion, over the design, redesign, modification, change, enhancement, improvement, authorized or unauthorized use, extent of registration, maintenance protection, enforcement, ownership, licensing, use and termination of the LOGOS, standards and its process for certifying products and services.
 6. **INFRINGEMENT.** COMPANY will promptly notify FOUNDATION in writing of any threatened, suspected or actual infringing use related to COMPANY’s products or services by any third party of FOUNDATION’s LOGOS or other intellectual property rights of which COMPANY becomes aware of, and will promptly report the matter in writing to FOUNDATION. FOUNDATION will have absolute discretion deciding whether any proceedings will be instituted or defended in relation to the LOGOS and will have the exclusive conduct of any such

proceedings. COMPANY will use reasonable endeavors to assist FOUNDATION in any such proceedings. The costs and benefits of such proceedings will be borne by FOUNDATION as owner of the LOGOS.

7. **INSPECTION.** COMPANY will provide FOUNDATION, at the request of the OPC Foundation within 30 days of request, a sample of use of the LOGOS as applied to the COMPANY's goods. If COMPANY fails to provide such sample within the required period, FOUNDATION, at its option may choose to terminate this AGREEMENT. If the sample of use is not acceptable to the FOUNDATION, then the FOUNDATION shall notify COMPANY of its findings. However, FOUNDATION's failure to notify COMPANY of its findings shall not mean a waiver of any of FOUNDATION's rights to enforce the use of LOGOS in full accordance with the law.
8. **NONCOMPLIANCE.** COMPANY shall immediately and its sole cost expense correct any of COMPANY's usage of the LOGOS that FOUNDATION regards as failing to comply with the standards and specifications established by the FOUNDATION.
9. **TERMINATION.** FOUNDATION may terminate this Agreement in the event of a breach of any provision of this Agreement, if the breach is not cured thirty (30) days after written notice by FOUNDATION. FOUNDATION may terminate this Agreement with or without cause provided that FOUNDATION delivers six (6) months prior written notice to COMPANY. If the COMPANY is no longer a member of the FOUNDATION in good standing, then this Agreement automatically expires. Upon termination, COMPANY will cease all use of the LOGOS, except that up to six (6) months from the date of termination COMPANY may deplete its inventory of materials bearing the LOGOS, subject of the terms of this Agreement, as long as this Agreement is not terminated based upon COMPANY's breach. If COMPANY refuses to stop using the LOGOS as required under this Agreement, then COMPANY may have its FOUNDATION membership revoked and FOUNDATION has the right to enforce the use of LOGOS in full accordance with the law.
10. **ASSIGNMENT.** COMPANY may not transfer its rights or obligations under this Agreement without the prior written consent, which shall not be unreasonably withheld, of the FOUNDATION and any attempt to do so will breach this Agreement.
11. **LIABILITY.** IN NO EVENT WILL FOUNDATION BE LIABLE TO COMPANY FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE AND WHETHER OR NOT FOUNDATION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FOUNDATION DISCLAIMS ANY AND ALL OTHER WARRANTIES OR REPRESENTATIONS EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, BUT NOT LIMITED TO WARRANTIES OR REPRESENTATIONS WITH RESPECT TO THE SPECIFICATIONS, MERCHANTABILITY OR FITNESS FOR ANY PURPOSE.
12. **INDEMINIFICATION.** COMPANY agrees to indemnify and defend FOUNDATION from and against any and all third party claims, damages, costs, and expenses (including reasonable attorneys' fees) related to COMPANY's products or services.
13. **GENERAL.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Arizona. This Agreement supersedes all previous agreements and representations of or on behalf of the Parties. This Agreement may not be changed, terminated or amended except in writing. All disputes, differences or questions arising out of or relating to this Agreement, or the

validity, interpretation, breach, violation, or termination thereof, shall be finally and solely determined and settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Said arbitration shall be conducted by a panel of three arbitrators, one of which shall be an Intellectual Property attorney. If a court of law finds any provision of this Agreement unenforceable, the Parties agree to replace the offending provision with an enforceable provision that most nearly achieves the intent and economic effect of the unenforceable provision and all other terms shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

COMPANY

Sign _____

Name _____

Title _____

Date _____

FOUNDATION

OPC Foundation
16101 N. 82nd Street
Scottsdale, AZ 85260

Sign _____

Name _____

Title _____

Date _____

EXHIBIT A

OPC Foundation compliance logo marks:



EXHIBIT B

COMPANY Products authorized for LOGO use:

1. _____.
2. _____.
3. _____.
4. _____.
5. _____.

EXHIBIT C

Statement of OPC Specifications Tested for Compliance:

A. For use with **Certified Compliance Logo:**

OPC Foundation Certified for Compliance logo is a trademark of the OPC Foundation and may be used only by written permission of the OPC Foundation. Any unauthorized use of the Certified for Compliance logo is prohibited.

OPC Foundation Certified for Compliance logo indicates that this product has been tested by an independent certification lab and certified to be compliant with the following OPC Specifications:

{List certified specs}

Additional information about compliance testing, logo program and a summary of test results for

{fill in product(s)}

can be found at www.opcfoundation.org.

B. For use with **Self Compliance Logo:**

OPC Foundation Self-Tested for Compliance logo is a trademark of the OPC Foundation and may be used only by written permission of the OPC Foundation. Any unauthorized use of the Self-Tested for Compliance logo is prohibited.

OPC Foundation Self-Tested for Compliance logo indicates that this product has been tested by the manufacturer to be compliant with the following OPC Specifications:

{List certified specs}

Additional information about compliance testing, logo program and a summary of test results for

{fill in product(s)}

can be found at www.opcfoundation.org.