



## **CERTIFIED PRODUCT LICENSE AGREEMENT**

This Certified Product License Agreement (this "Agreement") is made as of the date executed below (the "Effective Date") by and between Energistics Consortium, Inc. a Delaware USA corporation ("Energistics"), and the party named below ("Participant").

### **1) DEFINITIONS.**

The following terms shall have the following meanings when used herein:

- a. "Agreement" has the meaning set forth in the first paragraph of this document, and, as more fully described below, shall incorporate by reference those certain Energistics Policies (defined below).
- b. "Certification Approval" means Energistics' prior, written authorization for Participant to utilize the Certification Marks specified in this agreement in accordance with the requirements of the Product Certification Program for the appropriate Set of Energistics Standards.
- c. "Certification Marks" means the Certified Product Statement and Icon published on the Energistics website associated with a particular named set of Energistics Standards. See Schedule A.
- d. "Certified Product" means a Participant's product that utilizes a named Set of Energistics Standards and for which the Participant has completed the requirements for the appropriate Product Certification Program.
- e. "Effective Date" has the meaning set forth in the first paragraph of this Agreement. "Energistics" has the meaning set forth in the first paragraph of this Agreement.
- f. "Energistics" has the meaning set forth in the first paragraph of this Agreement.
- g. "Energistics Marks" has the meaning set forth in Section 3 below.
- h. "Energistics Member" or "Energistics Members" means, either individually or collectively, as the case may be, any person or legal entity which has executed an Energistics Membership Agreement and has fully performed all of its obligations thereunder, including, but not limited to, the payment of applicable dues and compliance with the Energistics Information and Intellectual Property Policy.
- i. "Policies" has the meaning set forth in Section 2 below.
- j. "Product Certification Program" means all materials and requirements published by Energistics, for testing and documenting how a Participant's product conforms to a specific named Set of Energistics Standards.
- k. "Set of Energistics Standards" means any one of the sets of material so listed on the Energistics web site, whether now or at any time in the future in any form or media whatsoever, that are published by Energistics as industry standards for which a Product Certification Program is available and generally consist of specifications, user guides, examples, and other materials.

### **2) ENERGISTICS AGREEMENTS & POLICIES.**

In the event the terms of this Agreement conflict with the terms of the Energistics Membership Agreement (posted on Energistics website), the Energistics Information and Intellectual Property Policy (posted on the Energistics website), the Trademark Usage Guidelines, a copy of which is attached hereto as Schedule B (or any other policies, agreements, terms or conditions of Energistics whatsoever (collectively, the "Policies"), the terms of the Policies shall govern in all respects.

### **3) LICENSE.**

- a. Subject to the terms and conditions of this Agreement, following Certification Approval for a Certified Product, Energistics grants to the Participant a revocable, non-exclusive, personal, non-transferable, non-assignable, limited license, without the right to sublicense, to display and reproduce those Certification Marks applicable to the Certified Product as specified by the Product Certification Program, its product literature, advertising, and marketing materials.
- b. Participant shall not alter or modify any Certification Mark.
- c. Participant acknowledges that the Certification Marks and all other Energistics trademarks, trade names and service marks (collectively, the "Energistics Marks") are owned by Energistics and Participant shall obtain no ownership interest therein. Participant agrees that it shall not register or reserve any Energistics Mark as a trademark, trade name, service mark, domain name or business designation anywhere in the world.

#### **4) CERTIFIED PRODUCT OBLIGATIONS.**

- a. Participant may, subject to the terms and conditions described herein, download from the Energistics website all applicable documentation and materials associated with the Product Certification Program. This may include a testing tool, installation guide, scripts, overview guide, and example test plan. These materials are provided to enable Participant to test their product prior to testing of such product by Energistics pursuant to the Product Certification Program.
- b. Participant will request Energistics to complete testing in compliance with the Product Certification Program process. Results for successful product certifications will be provided to Participant in advance of posting on the Energistics website.
- c. If Participant does not successfully pass certification, Participant may re-apply once within the same calendar year without additional fees, provided that Product Certification Program testing can reasonably be performed by Energistics prior to the close of the calendar year in question.
- d. Minor versions inherit certification from the major version certified by Energistics. Participant should run certification program internally to ensure continued certified product compliance. New major releases require Energistics certification.

#### **5) PREREQUISITES, FEES, AND RENEWALS.**

- a. For Energistics Members in good standing, participation in the Product Certification Program and use of the Certification Marks for a particular Certified Product, are benefits of membership.
- b. If the Participant is not a current member of Energistics, then Energistics will invoice Participant for the Certification Fee to initiate the Product Certification Program and Participant shall pay the invoiced amount within thirty (30) days after delivery of such invoice. Energistics shall not commence any activities related or pertaining to the Participant's submission until such time as the Certification Fee is actually received in full.
- c. For non- Energistics Members, the Certification Fee shall consist of a "Contributing Membership" with Energistics (or similar membership as may be established by Energistics from time to time in its sole and absolute discretion) at the appropriate level as described on Schedule B of the Energistics Membership Agreement. The Certification Fee will include membership to Energistics for the remainder of the calendar year.
- d. Energistics Membership fees are billed annually and become due on January 1 of each calendar year until Participant declines Energistics Membership.

#### **6) TERMINATION.**

Participant may terminate this Agreement upon thirty (30) days prior, written notice to Energistics, provided, however, that such termination shall, under no circumstances, entitle Participant to a refund or return of any amounts paid to Energistics pursuant hereto. User will cease using Certification Marks and Energistics will remove Certified Product designation from website.

Energistics may terminate this Agreement for cause, such as fraudulent practices by Participant. Such termination shall, under no circumstances, entitle Participant to a refund or return of any amounts paid to Energistics pursuant hereto. User will cease using Certification Marks and Energistics will remove Certified Product designation from website.

Upon termination of membership, this Agreement will remain in effect unless otherwise directed by Participant or unless terminated by Energistics. Products certified by Energistics will retain Certified Product status.

Termination is not an exclusive remedy and all other remedies shall be available, whether or not the license is terminated in whole or in part.

In addition to the foregoing paragraphs of this Article 5, Articles 9, 10, and 11 shall survive any termination in accordance with their terms.

- 7) **COSTS**. All costs and expenses incurred by Participant in conjunction with the exercise of rights and privileges afforded by this Agreement shall be the responsibility of Participant.
- 8) **ENTIRE AGREEMENT**. Except with respect to the Policies, this Agreement, including the appendices, exhibits and attachments hereto, constitutes the entire agreement between the parties covering the subject matter described herein, and supercedes and replaces any and all oral or written statements, negotiations, proposals or communications not expressly set forth herein. No modification or amendments shall be valid unless rendered in writing and signed by both parties.
- 9) **INDEPENDENT PARTIES**. The Participant and Energistics enter into this Agreement as independent contractors and neither shall act as the agent or representative of the other party, or represent that they are entitled so to act.
- 10) **LIABILITY**.
  - a. Participant acknowledges that Energistics' Certification Approval solely and exclusively extends to the particular matter which are the subject of an individual application for the Product Certification Program and under no circumstances shall this Agreement constitute on the part of Energistics an endorsement, guaranty or warranty of any such Certified Product, and Energistics assumes no responsibility or liability with respect to the Certified Products or any other products or services offered by Participant or its Affiliates. Participant shall indemnify, defend and hold Energistics and the Energistics Members, and their respective subsidiaries and affiliates, and their respective employees, agents, officers, and directors harmless from and against any and all demands, claims, causes of action, suits, judgments, damages, losses, costs and expenses (including attorneys' fees) arising out of or relating to any Certified Product or any other products or services offered by Participant.
  - b. Neither party shall be liable to the other for any indirect, consequential, incidental, punitive, exemplary or special damages, including inter alia, loss of revenue, loss of profit, loss or interruption of business, inaccuracy of any data or incorrect interpretation or recommendation, and/or punitive damages, even if the other party has been made aware of the possibility of such damages.
- 11) **APPLICABLE LAW**. Any and all controversies or claims arising out of, under, or relating to this Agreement, or the breach thereof, shall be determined and settled in accordance with the laws of the State of Texas, U.S.A. The parties agree that all disputes, controversies and claims arising under the Agreement shall be resolved in the federal or state courts sitting in Harris County, Texas, and each party hereby submits to the exclusive jurisdiction of such courts for the resolution of such disputes, controversies and claims. The parties hereto shall engage in good faith efforts to resolve any disputes which may arise between them under this Agreement by any means which they mutually deem appropriate, including conciliation, seeking the assistance of experts, or otherwise.

EXECUTED as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Print or type full legal name of Participant

\_\_\_\_\_  
Print or type name and title of person signing on behalf of  
Prospective Participant

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

Telecopy: \_\_\_\_\_

Email: \_\_\_\_\_

ACCEPTED:

Energistics

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**SCHEDULE A**

Energistics Standards and Certified Product Statements, Logos, Associated SIGS, and Fees

The following is an illustration of the information related to Product Certification that would be published on the Energistics Web site. This information is for illustration purposes only and is subject to revision. Consult the Web site for the current information.

<u>Energistics Standard</u>	<u>Certified Product Phrases</u>	<u>Certified Product Logos</u>	<u>Associated Special Interest Groups (SIGs)</u>
WITSML™	“an Energistics WITSML Certified Product”		WITSML SIG (Drilling)

## SCHEDULE B

### Trademarks Usage Guidelines.

#### Trademarks.

- a. Energistics is the owner of certain trademarks, logos, service marks, corporate names and domain names, including without limitation, ENERGISTICS, EPICENTRE, WITSML, PRODML, RESQML and ENERGYML (collectively, "Energistics Marks"). The Energistics Marks may be used only under license from Energistics.
- b. The Energistics Marks are available for use by Participant upon written request from Participant to Energistics. Energistics will review and approve such requests on a case-by-case basis.
- c. Unless you have express, prior, written permission from Energistics:
  - Do not use Energistics Marks in any manner, except in making objectively truthful, factual references to Energistics and the specifications provided by Energistics.
  - Do not use Energistics Marks as all or part of a product name or in or on any product, packaging, labels, advertisements, press releases, marketing materials, web pages, trade show materials, or any other materials.
  - Do not modify the Energistics Marks or change the logos or formats in which they appear, and do not incorporate the Energistics Marks into your own logo design.
  - Do not use Energistics Marks in any manner that might be understood to suggest an association with or sponsorship by Energistics; provided, however, that Energistics Marks may be used as part of a truthful statement that a company is an "Energistics Member".
  - Do not use Energistics Marks in any manner that could result in a likelihood of confusion between Energistics specifications and services and the goods and services of any other entity.
  - Always display the Energistics Marks as trademarks or registered trademarks, in all upper case letters or initial caps or initial caps with quotation marks, or otherwise in a manner that distinguishes the Energistics Marks from the other words in the text.
  - Always use the Energistics Marks as adjectives, together with the appropriate noun, e.g., WITSML Data Specification, and do not use the Energistics Marks in a pluralized or possessive form.
- d. Participant agrees not to register or reserve any of the Energistics Marks as a trademark, trade name, corporate name or domain name and, in the event Participant owns any such registration or reservation, it shall assign such registration or reservation to Participant.
- e. Participant agrees to credit Energistics in writing in a reasonable and conspicuous manner with respect to each copy of a commercial product or service offering of Participant that makes material use of any Energistics Work Item. Such credit may take the form of a written statement in the product documentation, packaging, on-screen "About" box, introductory splash screen or similar location, to the effect that "XYZ Product incorporates [Energistics WORK ITEM] technology/standards provided by the Energistics Consortium, Inc." Such credit shall include display of the relevant Energistics Mark(s) in a form agreed in advance by Energistics. Participant shall not use any Energistics Mark, or make any such statement, with respect to products and services that do not make material use of Energistics Work Items.
- f. Participant agrees that each usage of an Energistics Mark must be accompanied by the ™ or ® symbol, as appropriate, or the relevant non-U.S. symbol, and a notation must be placed at the bottom of every page on which such usage occurs stating: "[INSERT Energistics MARK] is a trademark or registered trademark of Energistics Consortium, Inc."
- g. In the event that the quality level of the products or services with which Participant associates the Energistics Marks is below the quality requirements of Energistics, Energistics shall notify the Participant and the Participant shall use reasonable efforts to improve such quality. If such quality is not improved after a reasonable period of time, in Energistics' discretion, then Energistics may suspend Participant's right (and requirement) to use the relevant Energistics Marks granted pursuant to Section 8(b) above in connection with such products or services until such time as Energistics determines, in its sole judgment, that the relevant products and services meet its quality requirements.