

## 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 logo 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. “Energistics” has the meaning set forth in the first paragraph of this Agreement.
- f. “Energistics Marks” has the meaning set forth in Section 3 below.
- g. “Energistics Member(s)” means either individually or collectively, as the case may be, any person or legal entity which has executed The Open Group OSDU Forum/Energistics Membership Terms Rider and has fully performed all its obligations thereunder, including, but not limited to, the payment of applicable dues and compliance with the Energistics Information and Intellectual Property Policy.
- h. “Recognized Testing Provider” means a company that has met the Energistics criteria to conduct independent testing for certification against an Energistics standard. For the avoidance of doubt, testing fees are paid directly to the Recognized Testing Provider.
- 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 website, 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.
- l. “The Open Group” means The Open Group, L.L.C., the legal organization that Energistics is affiliated with under its New ByLaws, whereby Energistics Membership and its benefits are granted through paid membership for participation in The Open Group OSDU™ Forum and the execution of The Open Group OSDU Forum/Energistics Membership Terms Rider. The Open Group also is a managed services provider of Energistics for certification management and administrative purposes.
- m. “The Open Group OSDU Forum/Energistics Membership Terms Rider” means the agreement, provided under The Energistics Consortium, Inc. New ByLaws, which stipulates the terms of Energistics membership through paid membership in The Open Group OSDU Forum.

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

In the event the terms of this Agreement conflict with the terms of The Open Group OSDU Forum/Energistics Membership Terms Rider, 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 that 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 an Energistics Recognized Testing Provider pursuant to the Product Certification Program.
- b. Participant will, at its expense, submit the product for complete compliance testing by an Energistics Recognized Testing Provider which shall provide its pass/fail report to Energistics to further the Product Certification Program process. Results of successful testing will be provided to Participant. Certified Products will be listed on the Energistics website.
- c. Minor versions inherit certification from the major version certified by Energistics. Participant should run the certification testing 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 under The Open Group OSDU Forum/Energistics Membership Terms Rider.
- b. If the Participant is a non-member of Energistics, then The Open Group will invoice Participant for the Certification Fee as described in Schedule C of this Agreement to initiate the Product Certification Program. Participant shall pay the invoiced amount within thirty (30) days after delivery of such invoice. Energistics shall not commence any Product Certification Program activities related or pertaining to the Participant's submission, until such time as the Certification Fee is received in full.
- c. Certification shall renew annually and remain valid upon payment of the associated fee:
  - i. For Energistics Members, it is the fee for The Open Group Membership in the OSDU Forum, due on the membership anniversary date.
  - ii. For non-members of Energistics, it is the annual Non-Member Certification Fee in Schedule C, due on the anniversary of the certification date.

#### **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 pursuant hereto. Participant will cease using the Certification Marks and Energistics will remove the Certified Product designation from website.

Energistics may terminate this Agreement for cause, such as fraudulent practices by Participant or non-payment of the associated fee. Under no circumstances shall Participant be entitled to a

refund or return of any amounts paid pursuant hereto. Participant will cease using Certification Marks and Energistics will remove Certified Product designation from website.

Upon termination of membership, unless Participant has fully paid the Non-Member Certification Fee whereby this Agreement shall remain in full force and effect, this Agreement will terminate. Participant will cease using the Certification Marks and Energistics will remove the Certified Product designation from the website.

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 6, 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 supersedes and replaces 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 matters 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.

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 Delaware, U.S.A. without giving effect to its principles of conflicts of laws. 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 this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

FOR AND ON BEHALF OF

FOR AND ON BEHALF OF

\_\_\_\_\_  
Participant

**ENERGISTICS CONSORTIUM, INC.**

\_\_\_\_\_  
Name/Version of Product to be Certified

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

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

Email: certification@energistics.org

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

548 Market St. #54820

San Francisco, CA 94104-5401


United States of America

\_\_\_\_\_  
This form may be digitally filled and signed, or it may be downloaded, filled in BLOCK LETTERS, hand-signed, and scanned. Please provide legal company name, complete address, and email in PDF to [certification@energistics.org](mailto:certification@energistics.org). Energistics Consortium, Inc. will countersign and return a fully executed copy to the email address provided above. If preferred, you may just complete, sign and send this signature page.

**SCHEDULE A**

**Energistics Standards, Certified Product Statements, and Logo**

The following is the Certification Mark applicable to the Certified Product as specified by the Product Certification Program.

<u>Energistics Standard</u>	<u>Certified Product Statement</u>	<u>Logo</u>
WITSML™	“an Energistics WITSML Certified Product”	

## 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 uppercase 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. Specific to the Certification Mark, in the event that the quality level of the products or services with which Participant associates the Certification Mark 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 Certification Mark granted pursuant to Section 3(a) 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



**SCHEDULE C**

**Non-Member Certification Fee**

The following annual Non-Member Certification Fee is equivalent to the membership fee in The Open Group OSDU™ Forum, through which membership in Energistics Consortium and its related benefits including Energistics certification is granted at no additional cost.

Energistics reserves the right to revise the Certification Fee to align with any fee change relating to The Open Group OSDU™ Forum membership on ninety (90) days’ written notice to Participant, automatically updating this Schedule C to take effect at the anniversary of this Agreement.

If Participant does not agree to the revised Certification Fee, Participant shall give Energistics at least thirty (30) days’ written notice of withdrawal from the Product Certification Program and this Agreement shall immediately terminate on its anniversary, subject to the terms of Section 6 above.

<b>Revenues Level</b>	<b>Non-member Certification Fee Per Year</b>
< US\$ 25M	\$ 2,500
\$25M- \$100M	\$ 12,500
>\$100M	\$ 20,000