

KANTARA INITIATIVE INTEROPERABILITY TRADEMARK LICENSE AGREEMENT

This Trademark License Agreement (this "License Agreement") is made and entered into as of the Effective Date described below by and between IEEE Industry Standards and Technology Organization ("IEEE-ISTO"), a Delaware Corporation, as trustee for Kantara Initiative ("KI") and _____, a _____ corporation ("COMPANY").

RECITALS

WHEREAS, IEEE-ISTO as trustee for KI owns good and valuable trademarks and logos;

WHEREAS, KI wishes to encourage the distribution of high quality products through the maintenance of a KI Test Procedure; and

WHEREAS, COMPANY wishes to license use of the Mark (as defined below) in accordance with the terms and conditions described below;

NOW THEREFORE:

The parties hereby agree as follows:

1) DEFINITIONS

For purposes of this License Agreement the following terms shall have the following meanings:

- a) "Effective Date" shall be the date of execution of this Agreement by IEEE-ISTO.
- b) "Implementation" shall mean a specific model or version of COMPANY's implementation of a KI specification, a representative sample of which has been submitted to KI and has passed the KI Interoperability Test Procedure. The Implementation may either be a product on its own or may be a component incorporated into a product without material modification to the component.
- c) "KI Interoperability Test Procedure" shall mean the applicable KI product testing and compliance requirements as set forth and as may be amended by KI from time to time with reasonable notice.
- d) "Mark" shall mean, the Kantara Initiative Interoperability logo, as depicted in the attached Exhibit A.
- f) "Related Companies" of Company shall mean a corporation, company or other entity that, now or hereafter, directly or indirectly controls, is

controlled by or is under common control with the Company, but such corporation, company or other entity shall be deemed to be a Related Company only so long as such control exists. For purposes of this definition "control" means direct or indirect ownership of or the legal right to exercise:

- (a) more than fifty percent (50%) of the outstanding shares or securities (representing the right to vote for election of directors or other managing authority); or
 - (b) in the case of a corporation, company or other entity which does not have outstanding shares or securities, as may be the case in a partnership, joint venture or unincorporated association, more than fifty percent (50%) of the ownership interest representing the right to make the decisions for such corporation, company or other entity.
- g) "Sponsored Event" shall mean an event sponsored by KI in which parties perform testing in an effort to determine if a party's product meets interoperability criteria as specified by KI.
- h) "Territory," subject to Section 2(e), shall be worldwide.

2) LICENSE GRANT

- a) Subject to and expressly conditioned upon compliance with the terms and conditions of this License Agreement, IEEE-ISTO hereby grants to COMPANY and any applicable Related Companies of COMPANY a nonexclusive, personal right (including through manufacturing and distribution agents or contractors of COMPANY and Related Companies) to use in the Territory, solely in the manner described in the KI Interoperability Logo Usage Guidelines set forth in the attached Exhibit B and as may be amended by KI from time to time with reasonable notice, the Mark in conjunction with the approved Implementations.
- b) Upon the passing of the KI Interoperability Test Procedure by COMPANY's Implementation, KI shall so notify COMPANY within thirty (30) days, substantially in the form of the communication set forth in Exhibit C, authorizing COMPANY to utilize the Mark in conjunction with the Implementation.
- c) COMPANY hereby ensures its Related Companies' compliance with the terms and conditions of this License Agreement. COMPANY agrees that it shall be jointly and severally liable for any breach of the terms and conditions of this License Agreement by such parties.
- d) IEEE-ISTO represents and warrants that to the best of its knowledge it owns the Mark on behalf of Kantara Initiative and has the right to enter into this License Agreement, including the right to license the Mark.

IEEE-ISTO further represents and warrants that in its reasonable business judgment it will maintain and enforce the validity and its ownership of the Mark in the Territory. If IEEE-ISTO in its reasonable business judgment declines to take action with regard to a particular instance of suspected infringement or challenge to the Mark, COMPANY may pursue such infringement or challenge at its own expense and cost. If such event, IEEE-ISTO will provide COMPANY with all reasonable cooperation.

- e) IEEE-ISTO may modify the license right set forth in Section 2(a) above to eliminate any country or jurisdiction from this License Agreement if IEEE-ISTO determines, in its reasonable judgment, that use or continued use of the Mark in such country or jurisdiction may subject IEEE-ISTO or any third party to legal liability, or may jeopardize IEEE-ISTO's rights in the Mark or any other IEEE-ISTO trademarks in that or any other country of jurisdiction. In such event, and upon notice from IEEE-ISTO, COMPANY shall with reasonable promptness cease all use of the Mark in such country or jurisdiction.
- f) COMPANY may not use or reproduce the Mark in any manner whatsoever other than as expressly described in Exhibit B.
- g) COMPANY agrees and acknowledges that IEEE-ISTO retains all right, title and interest in and to the Mark. Except as expressly granted in this License Agreement, COMPANY shall have no rights in the Mark. Under no circumstances will anything in this License Agreement be construed as granting, by implication, estoppel or otherwise, a license to any technology or proprietary right of IEEE-ISTO, KI or any member thereof other than the permitted use of the Mark pursuant to Section 2(a).
- h) COMPANY represents and warrants that it will use the Mark solely as provided in this License Agreement and will not use the Mark on goods, products or materials which, in IEEE-ISTO's reasonable judgment, will diminish or otherwise damage IEEE-ISTO's goodwill in the Mark, including but not limited to uses which could be deemed to be obscene, pornographic, excessively violent or otherwise in poor taste or unlawful, or which purpose or objective is to encourage unlawful activities.

3) FURTHER CONVEYANCES

The license grant in Section 2(a) is personal to COMPANY, and COMPANY, except as expressly provided in this Agreement or otherwise permitted by IEEE-ISTO in writing, shall not assign, transfer or sublicense this License Agreement (or any right granted herein) in any manner without the prior written consent of IEEE-ISTO. Notwithstanding the foregoing, where COMPANY transfers to a third party all or substantially all of the business of COMPANY that is responsible for the manufacture and distribution of Implementation, that party shall be entitled to use the Mark under the terms of this version of this License Agreement upon execution of same.

4) LOGO ADMINISTRATION FEE

Non-members of KI shall pay a logo administration fee of \$2,500 USD upon COMPANY's execution of this Agreement. No logo administration fee shall be required from KI members.

5) QUALITY, INSPECTION, AND APPROVAL

- a) COMPANY represents and warrants that to the best of its knowledge Implementation is in full compliance with the relevant KI specification, and COMPANY agrees to maintain the quality of Implementation at least at a level that meets industry standards and is commensurate with the quality of the representative sample submitted to KI and passing the KI Interoperability Test Procedure and any Implementation previously distributed by COMPANY.
- b) COMPANY shall supply IEEE-ISTO with suitable specimens of Implementation and COMPANY's use of the Marks in connection with Implementation at any time upon at least thirty (30) days prior written notice from IEEE-ISTO. COMPANY shall cooperate fully with IEEE-ISTO and KI to facilitate periodic review of COMPANY's use of the Mark and of COMPANY's continuing compliance with KI Interoperability Test Procedure. In any periodic review of COMPANY's compliance, Implementation will be tested under the compliance requirements that were in effect when Implementation was last submitted to the KI Interoperability Test Procedure.
- c) If IEEE-ISTO, in its sole discretion, determines that any use of the Mark or that the quality of any Implementation submitted to IEEE-ISTO for quality control purposes fails to conform to this License Agreement, IEEE-ISTO shall provide COMPANY with written notice of such failure or deficiency. The COMPANY shall have sixty (60) days thereafter to satisfy IEEE-ISTO that the COMPANY has fully corrected and remedied any such deficiencies. Should the COMPANY fail to cure the deficiencies within said sixty (60) day period, IEEE-ISTO may terminate this License Agreement with respect to such deficient Implementation.
- d) COMPANY represents and warrants that the representative sample of the specific model or version of COMPANY's product submitted to IEEE-ISTO and/or KI for testing accurately represents the specific model or version of COMPANY's product at all times Implementation is available during the Term of this License Agreement.
- e) COMPANY represents and warrants that it will comply with all applicable laws, rules, and regulations regarding promotion and sale of Implementation with any use of the Mark, and will not knowingly violate or infringe any right of any third party.

6) IDENTIFICATION AND USE

- a) COMPANY shall mark every use of the Mark with the trademark footnote as described in Exhibit A and shall otherwise comply with KI Logo Usage Guidelines (Exhibit B) as amended by KI from time to time with reasonable notice.
- b) COMPANY acknowledges IEEE-ISTO's ownership of the Mark. COMPANY shall employ commercially reasonable efforts to use the Mark in a manner that does not derogate from IEEE-ISTO's rights in the Mark and will take no action that will interfere with or diminish IEEE-ISTO's rights in the Mark. COMPANY agrees not to adopt, use or register any corporate name, trade name, trademark, domain name, product name, service mark or certification mark, or other designation the same as or substantially similar to the Mark. COMPANY agrees that all use of the Mark by COMPANY will inure to the benefit of IEEE-ISTO. COMPANY may not use the Mark in any way that implies endorsement or sponsorship by IEEE-ISTO or KI of COMPANY's Implementation or services, provided that COMPANY may disclose that applicable products meet or have passed the KI Interoperability Test Procedure after communication of such status by KI to COMPANY.

7) DEFENSE OF CLAIMS

- a) In the event IEEE-ISTO and/or KI receive information concerning an intellectual property infringement claim related to the Mark, IEEE-ISTO may at its expense, without obligation to do so, either (i) procure for COMPANY the right to continue to use the alleged infringing Mark as set forth in Section 2(a), or (ii) replace or modify the Mark to make it non-infringing, and in which case, COMPANY shall with reasonable promptness thereafter cease use of the alleged infringing Mark.
- b) IEEE-ISTO and KI shall have no liability for any intellectual property infringement claim based on COMPANY's manufacture or distribution of Implementation, or its use of the Mark.
- c) EXCEPT FOR IEEE-ISTO'S AND KI'S EXPRESS REPRESENTATIONS AND WARRANTIES MADE HEREIN, IEEE-ISTO AND KI MAKE NO WARRANTIES EITHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE WITH RESPECT TO THE MARK, INCLUDING ANY WARRANTY OF NON-INFRINGEMENT, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- d) COMPANY agrees to indemnify and defend IEEE-ISTO and KI from and against any and all claims, damages, costs and expenses (including reasonable attorneys' fees) and pay the amount of any adverse final judgment (or settlement to which both parties consent) arising out of or related to the Implementation in any manner, including user claims regarding Implementation's defect, failure or malfunction, provided

COMPANY is notified promptly in writing of any claim, and COMPANY has sole control over its defense or settlement.

8) CONSEQUENTIAL, ET AL. DAMAGES

NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES (INCLUDING LOSS OF BUSINESS PROFITS) ARISING FROM OR RELATED TO COMPANY'S MARKETING OR DISTRIBUTION OF IMPLEMENTATION, OR ANY USE OF THE MARK, REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY, BREACH OF WARRANTIES, INFRINGEMENT OF INTELLECTUAL PROPERTY, FAILURE OF ESSENTIAL PURPOSE OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL IEEE-ISTO OR KI BE LIABLE FOR ANY DAMAGES FOR COMPANY'S USE OF THE MARK IN VIOLATION OF THE TERMS AND CONDITIONS OF THIS LICENSE AGREEMENT.

9) INFRINGEMENT

COMPANY shall promptly notify IEEE-ISTO of any suspected infringement of or challenge to the Mark or any of its constituent elements. COMPANY shall further promptly notify IEEE-ISTO of any claims by third parties of infringement by the Mark or any of its constituent elements.

10) TERM OF LICENSE AGREEMENT

- a) The term of this License Agreement shall be for a period of two (2) years from the Effective Date, except as to certain Implementation described in Section 10(b) below, as to which the term of this License Agreement shall be indefinite; provided however, that either party shall have the right to terminate this License Agreement with cause upon thirty (30) days' prior written notice.
- b) Upon expiration of this License Agreement, the license right set forth herein may be renewed in COMPANY's discretion for an additional term by execution of a subsequent version of this License Agreement. Notwithstanding the foregoing, with respect to an Implementation that at the time of the expiration of this License Agreement has passed the KI Test Procedure and is posted on the KI Interoperability Compliance List, COMPANY may at its option continue to use the Mark in conjunction with that Implementation under the terms of this version of this License Agreement instead of the subsequent version.
- c) From and after termination of this License Agreement, COMPANY shall cease and desist from all use of the Mark. However, unless this License Agreement is terminated for breach in connection with more than a single

Implementation, COMPANY may distribute then-existing units of complying Implementation, and advertising materials containing the Mark for a period of six (6) months from the termination date provided use of the Mark in connection with such inventory and such inventory is in compliance with the terms and conditions of this License Agreement.

11) NOTICES

All notices and other communications under this License Agreement shall be in writing and shall be deemed given if delivered personally, mailed by registered or certified mail, return receipt requested, or sent by email or telecopy with a receipt confirmed by telephone, to the parties at the addresses herein or to such other addresses as a party may from time to time notify the other parties. Provision of an email address at which each party may be contacted is mandatory.

IEEE-ISTO
c/o COO/CFO
445 Hoes Lane
Piscataway, NJ 08854

KI
c/o Kantara Initiative Secretary
445 Hoes Lane
Piscataway, NJ 08854

Telephone: +1 732 465 5856
Fax: +1 732 981 9473
Email: info@ieee-isto.org

Telephone: +1 732 465 6475
Fax: +1 443 647 0099
Email: staff@kantarainitiative.org

COMPANY: Information listed at the end of this Agreement

12) ENTIRE LICENSE AGREEMENT; AMENDMENT

IEEE-ISTO providing this License Agreement to COMPANY does not constitute an offer by IEEE-ISTO. Upon execution by both IEEE-ISTO and COMPANY, this License Agreement, including all Exhibits, contains the entire agreement or the parties with respect to the subject matter hereof, and shall supersede and merge all prior and contemporaneous communications. It shall not be amended except by written agreement subsequent to the Effective Date and signed on behalf of the parties by their respective authorized representatives.

13) GOVERNING LAW; ATTORNEYS' FEES; EQUITABLE RELIEF

- a) This License Agreement shall be governed by and construed in accordance with the laws of the State of New York and applicable federal laws. COMPANY hereby consents to jurisdiction and venue in the state and federal courts sitting in the State of New York, in the city of New York, Borough of Manhattan. The parties agree to accept service of process by U.S. certified or registered mail, return receipt requested, or by any other method authorized by applicable law.

- b) If either party employs attorneys to enforce any rights arising out of or related to this License Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs, and other expenses.
- c) COMPANY acknowledges that a breach by it of this License Agreement may cause IEEE-ISTO and/or KI irreparable damage that cannot be remedied in monetary damages in an action at law, and may also constitute infringement of the Mark. In the event of any breach that could cause irreparable harm to IEEE-ISTO and/or KI, or cause some impairment or dilution of its reputation or trademarks, IEEE-ISTO shall be entitled to an immediate injunction, in addition to any other legal or equitable remedies.

14) HEADINGS

Section headings are used in this License Agreement for convenience of reference only and shall no affect the meaning of any provision of this License Agreement.

15) WAIVER

No waiver of any breach of any provision of this License Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.

16) SEVERABILITY

If any provision of this License Agreement (or any other agreements incorporated herein) shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

17) RELATIONSHIP

Neither this License Agreement, nor any terms and conditions contained hereto, shall be construed as creating an employment, partnership, joint venture or agency relationship or as granting a franchise, and the parties shall be deemed independent contractors. IEEE-ISTO and KI are not guarantors of the fitness or quality of the Implementations.

18) SURVIVAL

The provisions of Sections 2(g), 6(b), 7, 8, 10, 11, 12 and 13 shall survive expiration or termination of this License Agreement.

19) EXHIBITS

This License Agreement includes Exhibits A, B and C that are hereby incorporated by reference.

20) ASSIGNMENT

COMPANY agrees that it may not assign its rights or obligations under this Agreement without the prior written consent of IEEE-ISTO, except that COMPANY may assign this Agreement to any party that purchases a controlling interest in COMPANY and/or substantially all of its assets relating to the Implementation. IEEE-ISTO may assign its rights or obligations under this Agreement to KI, should KI become a separate legal entity, or to KI's related legal entity, if KI does not become a separate legal entity, should KI no longer be affiliated with IEEE-ISTO.

IN WITNESS WHEREOF, the parties hereto have executed this License Agreement as of the Effective Date and do each hereby warrant and represent that their respective signatory whose signature appears below has been and is on the date of this License Agreement duly authorized by all necessary and appropriate corporate action to execute this License Agreement.

COMPANY

**IEEE-ISTO as Trustee for
Kantara Initiative**

Name (Signature)

Name (Signature)

Name (Print)

Name (Print)

Date

Date

COMPANY: _____

Address: _____

Attention: _____

Telephone: _____

Fax: _____

Email: _____

With Notice Copies to (if desired):

COMPANY: _____

Address: _____

Attention: _____

EXHIBIT A

Kantara Initiative (KI) Interoperability Logo

Do not reproduce this example. Upon execution of the Kantara Initiative Trademark License Agreement and qualifying to use the Kantara Initiative Logo, COMPANY will receive access to all of the electronic logo art files.



Trademark footnote:

The Kantara Initiative Logos are trademarks of IEEE-ISTO.

EXHIBIT B

Kantara Initiative (KI) Interoperability Logo Usage Guidelines

COMPANIES that have attended a Sponsored Event and been notified by Kantara Initiative ("KI") of the approval of an Implementation can claim **INTEROPERABILITY**.

The term **INTEROPERABILITY** indicates an Implementation provided by an organization has been approved by Kantara Initiative as being interoperable according to the KI Interoperability Test Procedure.

The following guidelines govern the use of the Kantara Initiative Interoperability Logo ("Mark") by COMPANIES. A copy of the Mark will be provided to your COMPANY upon having an Implementation approved.

- A. The Mark may only be used to identify Interoperability of a COMPANY's approved Implementation per the Interoperability Trademark License Agreement.
- B. The Mark may not be used in a manner that would imply a COMPANY is sponsored or endorsed by, or affiliated with, the members of KI.
- C. The Mark may not be used in a manner that would imply that goods or services provided by a COMPANY are sponsored or endorsed by, or affiliated with, KI itself or its members, except for COMPANY should COMPANY be a KI member.
- D. The Mark may be utilized in the Implementation (including screen shots), in packaging for the Implementation and in marketing activities, including marketing presentations, corporate marketing collateral, and corporate websites in which the Implementation is identified as having passed "Kantara Initiative Interoperability".
- E. Electronic art of the Mark must be used as provided; changes in color, design, or proportions are not allowed. Electronic art is provided for reproduction purposes only. The Mark can be reproduced in black and white; reverse; and/or full color.

When reproduced in full color, the following colors should be used:

Pantone:
PMS 381c
PMS 382c
PMS 5503c

PMS 5493c
Black = Black
Grey = 60%k

Black and white usage of the Mark should appear as follows:



If the Mark is to appear on black or dark background the reverse version of the Mark is to be used as indicated below:



Full color usage of the Mark should appear as follows:



Do not condense, expand or distort the logotype in any way (see examples below). Do not position the Mark within a contained space or position or place a border around the Mark. Do not place the Mark in a patterned background or add graphic elements to the Mark.

It is very important to observe the correct scaling procedure when enlarging or reducing digital files of the logotype.

DO NOT USE; Example of improper scaling:



DO NOT USE; Example of improper scaling:



F. COMPANY web pages may use the Mark, provided that a link is made from the Mark to the Project's web site at <http://www.kantarainitiative.org>.

G. Licensees must include an acknowledgement in all advertising and promotions (in the form set forth in Exhibit A) to identify the Mark as a mark of the IEEE-ISTO.

Questions regarding the above Usage Guidelines should be directed to staff@kantarainitiative.org

EXHIBIT C

Notification of Passage of Kantara Initiative Interoperability Test Procedure

Your implementation (*implementation described in appropriate detail*) has passed the Kantara Initiative Interoperability test procedure for (*relevant included KI Event Specification(s) listed here*) implementations and it has been included on the Kantara Initiative Interoperability List. As such, you are entitled to use the Kantara Initiative Interoperability Logo on this implementation, subject to the terms and conditions of the Kantara Initiative Interoperability Trademark License Agreement and the Exhibits incorporated by reference therein.