

SOFTWARE LICENSE AGREEMENT

This Software License Agreement (the "Agreement") is made between **Trusted Computing Group**, incorporated in Oregon, with offices at 3855 SW 153rd Drive, Beaverton, OR 97006 ("TCG"), and _____, a _____ corporation having its principal place of business at _____ ("You").

WHEREAS:

- A. TCG has developed test suite software which performs compliance testing; and
 - B. You wish to use the test suite software to verify product compliance with TCG standards.
-

NOW IT IS AGREED as follows:

1. DEFINITIONS

In this Agreement:

- 1.1 **"Effective Date"** means the date this Agreement is fully executed by the last party of TCG and You to sign this Agreement.
- 1.2 **"Intellectual Property Rights"** means all present and future patent, copyright, confidential information, database rights, rights in designs, know-how, mask works, trademarks, service marks, trade and business names, domain names, trade secrets and any other similar rights in any country, whether registered or not and including all applications for such rights, throughout the world including all extensions and renewals.
- 1.3 **"You"** means the undersigned entity that desires to obtain a license to use the TCG Software.
- 1.4 **"TCG Software"** means the software listed in Exhibit A, a test suite for determining compliance with specifications adopted or under consideration by TCG ("TCG Specifications").
- 1.5 **"Object Code"** means the binary or officially recognized pre-compiled TCG Software.
- 1.6 **"Source Code"** means the un-compiled or text version of the TCG Software.

2. TCG SOFTWARE LICENCE

2.1 Licence Grant.

TCG hereby grants to You, under all of its Intellectual Property Rights, and You hereby accept a worldwide, non-exclusive, non-transferable, royalty free, fully paid up right and licence to use the TCG Software and related documentation as follows, until this Agreement expires or is terminated:

- 2.1.1 To use the TCG Software internally only for the purposes of testing and evaluating product compliance with TCG Specifications. For purposes of this Agreement, "internally" or "internal use" refers to use by You or, if You obtain the assistance of an affiliate, consultant, or independent contractor, use exclusively on Your behalf and subject to terms that are at least as restrictive as this Agreement.

2.1.2 To the extent You may receive the TCG Software in source code form, to modify the source code internally only for the purpose of testing and evaluating product compliance with TCG Specifications, You may not redistribute modified source code. You acknowledge that modified versions of the TCG Software cannot be used to determine or provide TCG certification, unless they are accepted and validated by TCG.

2.1.3 In the event that TCG, in its sole discretion, issues any updates, revisions, or patches for the TCG Software, such works shall be subject to the terms and conditions of this Agreement unless otherwise expressly provided in writing.

2.2 **No Reverse Compiling of Object Code.**

The TCG Object Code contains all the information and tools required for use in testing products for TCG compliance without any adaptation, alteration, amendment, modification, reverse compiling, decompiling, disassembling or decoding. You therefore agree not to adapt, alter, amend, modify, reverse compile, decompile, disassemble or decode the Object Code.

3. TCG'S OBLIGATIONS AND WARRANTIES

3.1.1 **Limited Program Warranty and Remedy.**

TCG warrants to You that for a period of ninety (90) days from the date of delivery of the TCG Software to You (the "Warranty Period") the media on which the TCG Software is supplied will be free of material defects.

In the event of breach of this warranty, TCG's exclusive liability and Your sole remedy for breach thereof shall be to correct or replace the TCG Software and/or the documentation within a reasonable time or, at TCG's option, to terminate this agreement and refund any fee that You have paid to obtain the TCG Software. TCG shall only be liable under this limited warranty when TCG is notified in writing of the breach of warranty within the Warranty Period.

4. YOUR OBLIGATIONS

4.1 You shall:

4.1.1 effect and maintain reasonable and adequate security measures to safeguard the TCG Software and all copies of the TCG Software in the possession or control of You from theft or unauthorized access or use;

4.1.2 comply and continue to comply with applicable laws and regulations;

4.1.3 agree that the TCG Software is not designed for use in or in association with safety critical applications such as medical systems, aviation transport management systems, aviation vehicles and nuclear power applications and TCG disclaims any express or implied warranty of fitness for such uses.

5. OWNERSHIP

5.1 TCG and its suppliers shall retain all rights, title and interest in and to the TCG Software and all Intellectual Property Rights therein. You shall not remove any copyright notices or similar markings from the TCG Software.

6. TERM AND TERMINATION

6.1 **Term.**

This Agreement and the licenses herein are perpetual unless terminated according to the provisions of this clause 6.

6.2 Termination.

You may terminate this Agreement at any time by providing TCG with written notice of such termination. TCG shall have the right to immediately terminate the Agreement for cause if You:

6.2.1 fail to perform any material term or condition of the Agreement provided You have received written notice of the failure from TCG and such failure is not corrected within thirty (30) days after receipt of such notice; or

6.2.2 become insolvent, file or have filed against You a petition under applicable bankruptcy or insolvency laws which is not dismissed within ninety (90) days, propose any dissolution, composition or financial reorganization with creditors, make an assignment for the benefit of creditors, or if a receiver, trustee, custodian or similar agent is appointed or takes possession with respect to any property or business of Yours.

6.3 Effect of Termination.

Clauses 3, 4, 5, 6.3, 7, 8, and 9 and any other provisions that by their nature survive termination shall survive termination of this Agreement.

6.4 Handling of TCG Software Upon Termination.

Upon termination of this Agreement for any reason You shall (a) cease using all TCG Software and (b) upon written request by TCG, return to TCG or destroy all copies of the TCG Software in Your possession or under its control within one (1) month after such written notice and certify to TCG within one (1) month from the end of that period that You have destroyed or have returned to TCG the TCG Software and all copies. This requirement applies to copies in all forms, partial and complete, in all types of media and computer memory, and whether or not modified or merged into other materials.

7. LIMITATION OF LIABILITY

7.1 EXCEPT FOR A BREACH OF THE CONFIDENTIALITY OBLIGATIONS UNDER SECTION 8, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY CLAIM IN RELATION TO ANY CONSEQUENTIAL, INCIDENTAL OR RESULTING DAMAGES; ANY LOSS OF PROFIT, REVENUES, GOODWILL, BUSINESS OPPORTUNITIES OR PURE ECONOMIC LOSS (IN EACH CASE WHETHER THE LOSS IS DIRECT OR INDIRECT) ARISING FROM THIS AGREEMENT OR THE USE OF THE TCG SOFTWARE IN ANY FORM. TCG DOES NOT INDEMNIFY YOU AGAINST CLAIMS OR PROCEEDINGS ALLEGING THAT USE OF THE TCG SOFTWARE INFRINGES ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHTS.

7.2 EXCLUSIVE OF ANY WARRANTIES DESCRIBED ABOVE, TCG MAKES NO WARRANTIES, CONDITIONS, UNDERTAKINGS OR REPRESENTATIONS OF ANY KIND, EITHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE IN RELATION TO THE TCG SOFTWARE INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ARISING FROM COURSE OF DEALING, USAGE OR TRADE.

8 CONFIDENTIAL INFORMATION

8.1 In this Agreement "Confidential Information" includes all information relating to the trade secrets, operations, processes, plans, intentions, product information, know-how, designs, market opportunities, transactions, affairs and/or business of the other party and/or to its customers or suppliers that are marked as "confidential" or similar wording, or if provided orally or visually, designated as confidential before its disclosure and memorialized in writing and provided to the receiving party no later than ten (10) business days from the date of disclosure.

8.2 The TCG Software includes TCG confidential information. You are not entitled to use or disclose that confidential information other than strictly in accordance with the terms of this Agreement. You may use in Your business activities the ideas, concepts and know-how contained in the TCG confidential information which are retained in the memories of Your employees who have had access to the TCG confidential information under this Agreement.

8.3 This clause 8 shall continue for a period of three (3) years from the date of disclosure, regardless of the termination or expiration of this Agreement.

9 GENERAL PROVISIONS

9.1 Governing Law.

This Agreement will be governed by and construed in accordance with the laws of the State of Oregon, without giving effect to any choice of law or conflicting provision or rule (whether of the State of Oregon or any other jurisdiction) that would cause the laws of any jurisdiction other than the State of Oregon to apply. The United Nations Convention on the International Sale of Goods shall not govern or otherwise apply to the transactions contemplated under this Agreement.

9.2 Disputes.

Other than as set out in Clause 9.4, any disputes between the parties arising out of or in connection with this Agreement which cannot be settled amicably shall in the first instance be notified in writing to the authorised representatives of each party. In the event that such authorised representatives do not reach an amicable settlement within 7 days of receiving written notice of such a dispute then the matter shall be referred to non-binding mediation conducted under the International Mediation Rules of the International Centre for Dispute Resolution rules in Portland, Oregon. In the event that the mediation does not reach an amicable settlement within 1 month of referral to the same, the parties may proceed to the courts pursuant to Clause 9.3.

9.3 Jurisdiction.

The parties agree to submit to the jurisdiction of a federal or state court located in or near Portland, Oregon for the resolution of any disputes arising from or relating to this Agreement.

9.4 Injunctive Relief.

Each party acknowledges and agrees that any breach of its obligations with respect to Confidential Information and Intellectual Property Rights could cause substantial harm to the other party that may not be remedied by payment of damages alone. Accordingly, the party will be entitled to seek preliminary and permanent injunctive relief in any jurisdiction where damage may occur in addition to all other remedies available to it for any such breach.

9.5 Notices.

Any notice under or in connection with this Agreement shall be in writing and shall be delivered by hand, or sent by first class post (or by airmail if sent abroad) as follows:

9.5.1 if to TCG, to the address given on page 1;

9.5.2 if to You, to the address on page 1;

or to such other address as either party may specify to the other from time to time by notice given in accordance with this Agreement.

In the absence of evidence of earlier receipt, any properly addressed notice shall be deemed to have been duly given:

if sent by first class post, 10 Working Days after posting, provided that there are no postal strikes affecting the relevant areas;

if sent by airmail, two days after posting, provided that there are no postal strikes affecting the relevant areas.

9.6 Severability.

In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force.

9.7 Waiver.

The failure to exercise or delay in exercising a right or remedy under this Agreement shall not constitute a waiver of the right or remedy or a waiver of any other or subsequent right or remedy.

9.8 Export Administration.

Each party agrees to comply fully with all relevant current and future export laws and regulations of the United States and/or any other country ("Export Laws") including, without limitation, to ensure that neither is the TCG Software (i) exported, directly or indirectly, in violation of Export Laws; or (ii) intended to be used for any purposes prohibited by the Export Laws, including, without limitation, nuclear, chemical or biological weapons proliferation. You are solely responsible for fulfilling any applicable governmental requirements in connection with use, disclosure and/or transport of the TCG Software upon your receipt of the TCG Software.

9.9 Relationship Between the Parties.

Each party is an independent contractor of the other; nothing in this Agreement shall be construed to create a partnership, joint venture or agency relationship between the parties.

9.10 Entire Agreement.

This Agreement together with the exhibits hereto constitutes the complete agreement between the parties and supersedes all prior or contemporaneous, non-fraudulent agreements or representations, written or oral, concerning the subject matter of this Agreement and such exhibits, appendices and attachments. This Agreement may not be modified or amended except in writing signed by a duly authorized representative of each party; no other act, document, usage or custom shall be deemed to amend or modify this Agreement.

9.11 Construction.

The headings in this Agreement are for purposes of convenience only and shall not affect the meaning or construction of the clauses to which they relate. Any use in this Agreement of words denoting the singular include the plural and vice versa.

9.12 Assignment.

Neither this Agreement nor any rights granted hereunder, nor the use of the TCG Software may be assigned, or otherwise transferred, in whole or in part, by You, without the prior written consent of TCG. This Agreement shall inure to the benefit of the parties' permitted successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year written below.

TCG

By: _____

Name: _____

Title: _____

Date: _____

You

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A

TCG Software Included in the Agreement