

**TEST MATERIALS LICENSE AGREEMENT**

*(For GlobalPlatform Member Test Tool Vendors to use  
GP Test Suites to create Qualified Test Tools for their own internal use only)*

THIS TEST MATERIALS LICENSE AGREEMENT (the “Agreement”) by and between GlobalPlatform, Inc., a Delaware corporation with its principal place of business at 544 Hillside Road, Redwood City, CA 94062 (“GP”), and the undersigned Licensee (“Licensee”; and Licensee and GP each a “Party” and collectively the “Parties”), is effective as of the date executed by both Parties, and is entered into in connection with Licensee’s participation in the GP Test Product Compliance Program. Subject to the terms and conditions herein, for good and valuable consideration, including the promises, covenants and payments provided for in this Agreement, the Parties hereby agree as follows:

**DEFINITIONS**

As used in this Agreement:

“Configuration” means a particular set of features and implementation rules as specified by GP for, or required by, a given GP specification, such as a configuration for mobile or a configuration for government use.

“Full or Participating GP Member” means a Full Member of GP or a Participating Member of GP, as each is further described in the By-laws of GP.

“GP Compliant Product” means a commercial implementation of a smart card or terminal related product or component that has successfully demonstrated sufficient conformance with the relevant GP specifications at a “Test Fest” conducted by GP.

“GP Materials” has the meaning ascribed to it in Section 4.1 below.

“GP Test Product Compliance Program” means the program managed by GP for purposes of validating whether submitted Test Products, smart cards or terminal related products or components, or applying functional evaluation laboratory facilities, are in compliance with applicable GP specifications.

“Improvement” shall mean, with respect to any of the Licensed Works, any invention, discovery, concept, data, information, know-how, suggestion, modification, idea, original expression, working model, prototype or other enhancement or improvement of such Licensed Works, whether patentable or not.

“Intellectual Property” shall mean on a worldwide basis any and all: (i) rights associated with works of authorship, including copyrights thereof; (ii) trade secrets or any data or information which provides value or a competitive advantage to its holder by not being publicly known; (iii) patents, patent applications, continuations, divisionals, reexaminations, reissues; (iv) designs, algorithms and other industrial property rights; (v) other intellectual and industrial property rights of every kind and nature, however designated, whether arising by operation of law, contract, license or otherwise; and (vi) applications, registrations, renewals, extensions, continuations, continuations-in-part, divisions or reissues thereof now or hereafter in force of the foregoing (including any rights in any of the foregoing) and foreign equivalents thereof.

“Licensed Works” means the GP Test Suites that GP makes generally available to Full or Participating GP Members from time to time in connection with the GP Test Product Compliance Program for

purposes of enabling Test Product vendors to develop Qualified Test Products, any Intellectual Property therein, and all related documentation, including any subsequent updates, revisions, Improvements, and enhancements of some or all of the Licensed Works, that GP has developed or may develop in the future and may make available as part of the GP Test Product Compliance Program.

“Qualified Test Product” means a Test Product for which GP has provided written validation at or in connection with an applicable GP “Test Fest” event that such Test Product has satisfactorily demonstrated compliance with the relevant and then current GP specification for the applicable category of Test Product, so long as such validation has not expired, terminated, or been revoked, withdrawn or invalidated.

“Subsidiary” means any entity of which a majority of the outstanding voting securities or interests are owned, either directly or indirectly, by a Full or Participating GP Member.

“Test” means the testing of a proposed GP Compliant Product to determine whether the particular version thereof complies with the relevant GP specification.

“Test Product” means any test tool that integrates the Licensed Works or any portion thereof and is created, developed or produced by Licensee for purposes of testing proposed GP Compliant Products for compliance with relevant GP specifications.

“Test Suite” means a suite consisting of GP testing documentation, GP test scripts and/or other GP Materials, based on a given GP smart card specification and related Configuration, which has been released by GP for purposes of enabling authorized users to develop corresponding Qualified Test Products.

## **TERMS AND CONDITIONS**

**1.0 Grant of License.** Subject to the terms and conditions of this Agreement, GP hereby grants to Licensee a limited, non-exclusive, royalty-free, worldwide, non-transferable, revocable license to use the Licensed Works, on a non-commercial basis, solely for purposes of creating, developing, producing and internally testing Test Products created by Licensee and intended by Licensee to be qualified as Qualified Test Products (the “License”).

## **2.0 Restrictions, Compliance Obligations, Reporting and Payment.**

### **2.1 Restrictions.**

#### **2.1.1 No Copying, Modification, Distribution, Sublicensing or Consulting.**

Except as otherwise expressly provided herein or approved in writing by GP, Licensee shall not, and nothing in this Agreement shall be construed to grant to Licensee any right to, for any purpose, copy, modify, distribute, disclose, demonstrate, implement, sell, offer for sale, create derivative works based upon, sublicense or otherwise the Licensed Works, any portion thereof or any Test Product. Without limiting the foregoing, Licensee hereby expressly acknowledges and agrees that, except as expressly provided pursuant to a separate written agreement executed by GP, Licensee shall not sell or offer for sale Test Products or derivative Test Products or provide any consultative, technical or other professional services (including without limitation, training, support, customization, provision of Tests, support for Test Products or other services) that utilize, relate to or otherwise exploit Licensee’s knowledge of the Licensed Works or any other GP Materials or portion thereof, including without limitation, Licensee’s knowledge of any Tests, Test Suites, Configurations, related application layers or GP qualification,

validation or certification programs or processes.

**2.1.2 Copyright/Patent Notice.** All reproductions or embodiments of any of the Licensed Works, related documentation or portion of any of the foregoing shall incorporate the legends that appear on such Licensed Works or such other legends as GP may instruct Licensee from time to time.

**2.1.3 Restricted Rights.** Use, duplication or disclosure by or to the United States government may be subject to Restricted Rights as set forth in the Rights in Technical Data and Computer Software Clauses in DFARS 252.227-7013 (c)(1) and FAR 52.227-19(a)-(d) as applicable (or successor regulations thereto) and Licensee agrees to comply with all such Restricted Rights in connection with its use of any of the Licensed Works.

**2.1.4 No Warranties or Guaranties.** Under no circumstances shall Licensee make or publish any representation, warranty or guarantee by or on behalf of GP concerning any GP Materials or portion thereof.

**2.1.5 No Commercial Use.** Under no circumstances shall Licensee use any of the Licensed Works, portion thereof or Test Product for any commercial purpose, except pursuant to, and then only in accordance with, a separate written Qualification and Listing Agreement or Testing and Consulting Services License Agreement (or other written agreement acceptable to GP) executed and delivered by Licensee and GP.

**2.2 Compliance Obligations.** All times while this Agreement is in effect, Licensee must be, or must be a Subsidiary of, a Full or Participating GP Member that (a) is in “good standing” in accordance with the By-laws of GP and (b) pays and continues to pay all fees associated with its GP membership (including without limitation, annual member dues, assessments and any other fees relating to GP membership) within 45 days of the date when due.

**3.0 Support and Maintenance.** GP shall have no obligation (to Licensee or otherwise) to support or maintain the Licensed Works or any portion thereof.

#### **4.0 Intellectual Property.**

**4.1 Ownership of Intellectual Property.** Notwithstanding anything to the contrary in this Agreement, Licensee acknowledges and agrees that the Licensed Works, the Titles, all Improvements, any and all scripts, tools, computer code or other materials of, or made available by, GP, each portion of each of the foregoing, all right, title and interest in and to each of the foregoing, and any other Intellectual Property of GP (the foregoing, collectively, “GP Materials”) shall, at all times, be and remain the exclusive property of GP, and except as expressly provided herein, nothing in this Agreement shall be construed to convey to Licensee or any third party any right, title, interest or license in the any of the foregoing. GP acknowledges and agrees that, as between Licensee and GP, Test Products developed exclusively by Licensee shall be Licensee’s exclusive property; provided that Licensee’s ownership and use of such Test Products shall be subject in all respects to GP’s exclusive ownership of the underlying GP Materials and the terms and conditions of this Agreement. Except for the licenses expressly granted herein, nothing in this Agreement shall be construed to convey or license to Licensee or any third party any right, title or other interest whatsoever, and GP hereby expressly reserves all other rights.

**4.2 Ownership of Improvements.** All Improvements shall be and remain the exclusive property of GP, and Licensee hereby agrees that this Agreement constitutes an irrevocable transfer and

assignment by Licensee to GP of all right, title and interest in and to all Improvements, except as provided in Section 4.3 below. Licensee waives and further agrees not to assert any moral or comparable rights that Licensee may have in the Improvements including, without limitation, any right to prevent modification, any right to receive attribution of authorship, or any right to control Improvements.

**4.3 Improvements that Incorporate Licensee's Intellectual Property.** To the extent that any Improvement incorporates any element which is subject to any Intellectual Property right owned by Licensee, Licensee hereby grants to GP an unrestricted, non-exclusive, perpetual, royalty-free, world-wide, irrevocable and fully transferable license to make, use, sell, offer for sale, reproduce, create derivatives of, publish, display or otherwise practice such Intellectual Property right.

**4.4 Duty to Assist.** Upon request, Licensee shall deliver to GP fully executed documents giving full effect to GP's rights, title and interests as contemplated by this Section 4.0.

**5.0 Confidentiality.** For the purposes of this Agreement, "Confidential Information" shall mean the Licensed Works and each portion thereof, all drawings, samples, artwork or computer-generated media pertaining to Titles, and any other proprietary or confidential information or materials of GP or its licensors, in any form or media, written or oral, whether or not marked "Confidential". Confidential Information shall not include information that (1) is or becomes generally publicly available through no fault of Licensee; (2) is lawfully obtained from a third party that has the right to make such disclosure; (3) is known to Licensee prior to receipt from GP or any officer, agent, contractor or representative of GP; or (4) Licensee independently develops without use of or reference to any information or materials provided or made accessible to Licensee by GP. Licensee will hold in strict confidence and will not use for any purpose other than purposes within the scope of the License granted hereunder, either before or after termination of this Agreement, any Confidential Information; provided that Licensee may disclose the Licensed Works to those of Licensee's employees and third party developers that (a) need access to the Licensed Works in order to assist Licensee in its development of Test Products (including the development of related documentation to support such Test Products) and (b) have executed written agreements obligating them to hold the Licensed Works in strict confidence and to use the Licensed Works solely for purposes of assisting Licensee in such development. Licensee will take all reasonable precautions to avoid any use or disclosure of Confidential Information in violation of the terms and conditions of this Agreement. As between Licensee and GP, all Confidential Information is and shall remain the sole property of GP. Upon the termination of this Agreement and Licensee's status as a Full or Participating GP Member, or upon GP's earlier request, Licensee will immediately destroy or deliver to GP (at GP's election) all copies of any Confidential Information that may be in Licensee's possession or control. If Licensee destroys such information, Licensee shall promptly certify such destruction to GP. Licensee acknowledges and agrees that any violation of its obligations pursuant to this Section would cause GP irreparable injury and that damages at law for any such breach would be inadequate and impossible to ascertain. In the event of the breach or threatened breach of any such obligations, in addition to any and all other remedies at law or in equity, GP shall have the right to injunctive relief enjoining any and all threatened or actual activities in violation thereof; and Licensee hereby consents and agrees that temporary and permanent injunctive relief may be granted in any proceedings which might be brought to enforce any such rights without the necessity of posting bond.

## **6.0 Termination.**

**6.1 Breach.** In the event of any breach of any of the provisions of Section 2.0 by Licensee, this Agreement shall automatically and immediately terminate with no further action of GP; provided that if, at the time of such breach, Licensee is a Subsidiary of a Full or Participating GP Member (the "Parent"), and Licensee's only breach of this Agreement is its Parent's failure to pay fees in the manner

specified in Section 2.2(b) hereof, such termination shall not be effective until the date thirty (30) days after the occurrence of such breach, and such termination shall be ineffective if, within such thirty (30) day period, such fees are paid in full or Licensee becomes a Full or Participating GP Member. In the event of any material breach of any other provision of this Agreement by Licensee, GP may terminate this Agreement upon thirty (30) days' written notice to Licensee; provided that such termination shall be ineffective if such breach is cured to GP's satisfaction within the applicable thirty (30) day period.

**6.2 Termination for Convenience.** Licensee may immediately terminate this Agreement upon written notice to GP. GP may terminate this Agreement for convenience upon sixty (60) days prior written notice to Licensee.

**6.3 Litigation.** GP may terminate this Agreement or all or part of the licenses granted in this Agreement in the event that any of the Licensed Works, the Titles, any Test Product or any portion or Licensee's use of any of the foregoing gives rise to a claim against a GP Party (as defined in Section 9.1 below) that contains at least one claim predicated upon the manufacture, use, importation, offer for sale, sale or licensing of any Test Product (a) for which the indemnification of GP Parties in Section 9.0 does not apply or (b) for which Licensee asserts that such indemnification does not apply.

**6.4 Licensee's Insolvency; Breach of Confidence.** GP may terminate this Agreement immediately upon notice to Licensee if Licensee becomes insolvent, is dissolved or liquidated, has a petition in bankruptcy, reorganization, dissolution or liquidation, or similar action filed by or against it, is adjudicated as bankrupt, has a receiver appointed for its business, or makes an assignment for the benefit of creditors, or if Licensee breaches the confidentiality provisions of this Agreement.

**6.5 IP Claims.** In the event GP suspects, determines or receives notice that the Licensed Works, any part thereof or any Test Product infringes any third-party Intellectual Property right (an "Infringement Claim"), GP may, at its sole option, pursuant to Section 9.2(iii), upon written notice to Licensee, immediately terminate this Agreement or all or part of the licenses granted in this Agreement.

**6.6 Rights and Obligations After Termination.** Upon termination of this Agreement, (a) Licensee will immediately (i) (A) if Licensee is still a Full or Participating GP Member, cease all use of the Licensed Works and Titles other than as is generally permitted for all such Members and (ii) if and when Licensee is no longer a Full or Participating GP Member, cease all use of the Licensed Works and Titles and (b) all rights and obligations of the Parties hereunder shall terminate, except that the Parties' respective rights and obligations under Sections 2.1 and 3 through 11 of this Agreement shall survive.

**7.0 No Warranties.** THE LICENSED WORKS AND ALL OTHER GP MATERIALS ARE PROVIDED ON AN "AS IS", "WHERE IS", BASIS, "WITH ALL FAULTS" KNOWN AND UNKNOWN. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, GP EXPRESSLY DISCLAIMS, AND LICENSEE EXPRESSLY WAIVES, ALL WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE LICENSED WORKS, TITLES AND ALL OTHER GP MATERIALS, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

**8.0 No Damages.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL GP OR ANY OF ITS PRINCIPALS, MEMBERS, OFFICERS, EMPLOYEES, AFFILIATES, CONTRACTORS, SUBSIDIARIES, OR PARENT ORGANIZATIONS, BE LIABLE TO LICENSEE OR TO ANY THIRD PARTY FOR ANY DAMAGES IN CONNECTION WITH THIS AGREEMENT, THE LICENSED WORKS OR ANY OTHER GP MATERIALS, INCLUDING WITHOUT LIMITATION, SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR PUNITIVE

DAMAGES AND DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR OTHER MONETARY LOSS, WHETHER OR NOT ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

THE LIMITATIONS OF DAMAGES OR LIABILITY SET FORTH IN THIS AGREEMENT ARE FUNDAMENTAL ELEMENTS OF THIS AGREEMENT. LICENSEE ACKNOWLEDGES AND AGREES THAT GP WOULD NOT BE ABLE TO PROVIDE THE LICENSED WORKS OR PERFORM HEREUNDER ON AN ECONOMIC BASIS WITHOUT SUCH LIMITATIONS.

**9.0 Indemnification; Claims; Insurance.**

**9.1 Indemnity of GP.** Licensee agrees to indemnify, defend and hold harmless GP, its members and affiliated companies, and each of their respective employees, officers, directors and agents (each, a “GP Party”) from all losses, costs, damages, claims and other expenses (including reasonable attorneys’ fees) (collectively, “Losses”) arising out of or in connection with any (a) breach by Licensee of any term or condition of this Agreement or (b) claim that a third party Intellectual Property right is infringed in connection with the creation, development, manufacture, testing, importation, sale, offer for sale, distribution, reproduction, display or other use by Licensee of any Test Product (or any other product, process, or system which implements or relies on the Licensed Works or any portion, Improvement or derivative thereof), either alone or in combination with other products, processes or systems.

**9.2 Avoidance of Claims and Mitigation of Damages.** In the event that GP becomes aware of a potential claim of infringement with respect to the Licensed Works or any portion thereof that has been or may be asserted against GP, Licensee or any third party, GP may in its sole discretion (i) modify such Licensed Works so as to avoid such infringement or potential claim, (ii) procure for Licensee the right to continue using such Licensed Works or (iii) terminate any or all of the licenses granted in this Agreement pursuant to Section 6.5 above with respect to such Licensed Works. In the event that GP modifies any of the Licensed Works pursuant to this Section 9.2, Licensee shall promptly upon written notice from GP modify each Test Product so as to implement such modification of the Licensed Works.

**9.3 Insurance.** At all times while this Agreement is in effect, Licensee shall procure, maintain and keep in full force and effect for GP’s mutual benefit, at Licensee’s sole cost and expense, the following types of insurance and minimum coverage amounts: (i) a fully-paid commercial general liability insurance policy, alone or in combination with umbrella liability insurance, with a combined single limit of at least \$1,000,000 and an annual aggregate limit of at least \$2,000,000 with respect to bodily injury, personal injury, and property damage; and (ii) professional liability or errors and omissions insurance with a limit of at least \$2,000,000 per claim and an annual aggregate limit of at least \$2,000,000. If the policies described above are claims made policies, Licensee shall maintain such insurance in force for not less than one year after the termination of this Agreement. Upon request, Licensee shall submit certificates of said policies to GP evidencing that the required coverages are in effect. Licensee shall provide at least ten (10) days notice to GP prior to any cancellation or reduction of any required coverage, and shall provide written notice to GP promptly upon receiving notice from any insurer that any such insurance policy will be or has been cancelled or subject to a reduction in coverage.

**10.0 Compliance with Laws and Export Regulations.** To the extent applicable, Licensee agrees to comply with the US Export Administration Regulations and all other applicable laws and regulations governing export, import or use of encryption products and technology.

**11.0 Miscellaneous Provisions.**

**11.1 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to the choice of law provisions of the State of Delaware or any other jurisdiction. Each Party consents to the exclusive jurisdiction and venue of the state and federal courts within the State of Delaware.

**11.2 Notices.** All notices required under this Agreement shall be in writing. Notice shall be deemed given when delivered in person or one (1) day after deposit for overnight delivery upon written verification of receipt. Notices and correspondence to GP shall be sent to the attention of the Secretariat at the address for GP set forth above (or such other person or address as GP may designate in writing), except as may be required or permitted by specific Sections of this Agreement. Notices and correspondence to Licensee shall be sent to the person and address identified by Licensee in the attached Licensee Registration Form (which is incorporated herein by this reference) or such other person or address as Licensee may designate in writing by notice in accordance with this Section.

**11.3 Nonassignability.** Licensee, by operation of law or otherwise, may not assign or otherwise transfer any of its rights or delegate any of its duties or obligations under this Agreement without the prior written consent of GP, which consent shall not be unreasonably withheld. Any attempt to do so is void.

**11.4 Waiver.** The waiver, express or implied, of any breach of this Agreement will not waive any subsequent breach of the same or a different kind.

**11.5 Headings.** The headings to the Sections and subsections of this Agreement are included merely for convenience of reference and shall not affect the meaning of the language included therein.

**11.6 Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. For purposes hereof, a facsimile copy of this Agreement, including the signature pages hereto, shall be deemed to be an original.

**11.7 Attorney's Fees.** In the event of any action, suit or proceeding brought by either Party to enforce the terms of this Agreement, the prevailing Party shall be entitled to receive its costs, expert witness fees, and reasonable attorneys fees and expenses, including costs and fees on appeal.

**11.8 Severability.** If any provision of this Agreement is held to be invalid, illegal or unenforceable, such provision shall be deemed omitted to the extent required, the remaining terms shall remain in full force and effect, and the validity, legality and enforceability of the remaining provisions will in no way be affected or impaired thereby so long as the intent of the Parties can be preserved.

**11.9 Entire Agreement; Amendment.** This Agreement (including any exhibits, schedules or appendices attached hereto or referenced herein, each of which is incorporated herein by this reference) sets forth the entire agreement and understanding between the Parties regarding the subject matter hereof and supersedes any and all prior agreements between the Parties regarding such subject matter. Except as expressly provided herein, no modification or waiver of this Agreement or any exhibit, schedule or appendix hereto shall be binding unless it is in writing and signed by both Parties.

*[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]*

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed.

**ACCEPTED AND AGREED TO BY:**

**LICENSEE:**

Licensee Name: \_\_\_\_\_  
*(please print complete name of Licensee company)*

Signature: \_\_\_\_\_

Print Signatory Name: \_\_\_\_\_

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

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

**ACCEPTED AND AGREED TO BY:**

**GLOBALPLATFORM, INC.**

Signature: \_\_\_\_\_

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

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

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



## Licensee Registration Form

This Licensee Registration Form is to be completed by Licensee and attached to the accompanying Test Materials License Agreement between the undersigned Licensee and GlobalPlatform, Inc.

Licensee Company Legal Name: \_\_\_\_\_

Licensee Company existing under the laws of: \_\_\_\_\_

Address of Licensee's registered office: \_\_\_\_\_

Licensee Contact Name: (for legal notices) \_\_\_\_\_

Licensee Contact Email address (for legal notices): \_\_\_\_\_

Licensee Contact Telephone Number: \_\_\_\_\_

Licensee Contact Facsimile Number: \_\_\_\_\_

Licensee Business Contact Name: \_\_\_\_\_

Business Contact Email address: \_\_\_\_\_

Business Contact Phone number: \_\_\_\_\_

Business Contact Facsimile number: \_\_\_\_\_

What products or services is Licensee providing or does Licensee plan to make available using the Licensed Works?  
\_\_\_\_\_

Form Prepared By: \_\_\_\_\_

“Print Name and Title”

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