

Open Trusted Technology Provider™ Standard (O-TTPS) Certification Agreement

January 2017, Version 1.1.2

This Certification Agreement ("Agreement") is made and entered into by and between the following Parties: The Open Group, L.L.C., ("The Open Group") and the Organization described in the signature section of this Agreement. The Open Group and the Organization are sometimes referred to herein as a "Party" or the "Parties."

WHEREAS:

1. The Organization wishes to register for certification in The Open Group **Open Trusted Technology Provider Standard (O-TTPS)** program ("the Program"); and,
2. The Scope of Certification for such certification is uniquely defined in the Conformance Statement submitted to the Certification Authority; and,
3. The Open Group is the Certification Authority operating the Program in accordance with the terms of the Certification Policy for the Program.

NOW THEREFORE, in consideration of the mutual rights and obligations of the Parties set forth below, the Parties agree as follows:

1. Definitions:

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

Certification Authority	The organization that manages the day-to-day operations of the O-TTPS Certification Program in accordance with the policies defined in the Certification Policy document. Authorized staff of The Open Group serve as the Certification Authority for the O-TTPS Certification Program. The Certification Authority's website is located at http://ottps-cert.opengroup.org .
Certification Package Document	The document in which the Organization defines the relationship between each requirement and the Evidence of Conformance; it is also where the Assessor subsequently records the Assessment findings and provides the Assessment Report.
Certification Policy	The Certification Policy document relating to the Program, as amended from time to time by The Open Group, currently available via the Certification Authority's website.
Certification Register	The official list of all entities that have achieved O-TTPS certification, maintained by the Certification Authority and made publicly available via the Certification Authority's website.
Conformance Requirements	The O-TTPS requirements that the Organization must meet in order to demonstrate conformance to the O-TTPS. Those requirements are declared in the Conformance Requirements document.

Certification System	The software and hardware information systems and the supporting certification documents used in the certification process. This web-based system is available via the Certification Authority's website.
Certification System Deficiency	An agreed error in the Certification System, which is inhibiting the certification process. A Certification System Deficiency is one possible outcome of a Problem Report.
Assessment	The mandatory use of the Assessment Procedures to inspect the Organization's Evidence of Conformance and Certification Package Document, together with additional information as required in order to recommend conformance to the Conformance Requirements for the declared Scope of Certification.
Assessment Methodology	The following certification documents: the Certification Policy, the Conformance Requirements, and the Assessment Procedures.
Assessment Methodology Deficiency	A decision made by the Specification Authority that elaborates or refines the meaning of an Assessment Methodology document. An Assessment Methodology Deficiency is one possible outcome of a Problem Report.
Assessor	An individual or team of individuals within an O-TTPS Recognized Assessor organization who meets the criteria for performing Assessments for the O-TTPS Certification Program as specified in the O-TTPS Recognized Assessor Agreement and may perform Assessments of an Organization's Scope of Certification.
Conformance Statement	The document in which the Organization declares its Scope of Certification.
Evidence of Conformance	Evidence submitted to the Assessor performing the Assessment to demonstrate conformance to the Conformance Requirements within the Organization's declared Scope of Certification.
Interpretation	A decision made by the Specification Authority that elaborates or refines the meaning of the O-TTPS. An Interpretation is one possible outcome of a Problem Report.
O-TTPS Recognized Assessor	A company that has met the O-TTPS Recognized Assessor criteria defined in the O-TTPS Recognized Assessor Agreement, has entered into the O-TTPS Recognized Assessor Agreement with the Certification Authority, and makes available Assessors to perform Assessments of Organizations for the purpose of O-TTPS certification.
Person	Includes a body of persons whether or not incorporated.
Problem Report	A question of clarification, intent, or correctness of the O-TTPS, the Assessment Methodology, or the Certification System. Problem Reports identified as valid are resolved by the issuance of an Interpretation, an Assessment Methodology Deficiency, or an Certification System Deficiency.

Registration	A process completed by the Organization in the web-based Certification System to initiate the certification process. Registration consists of completion of web forms containing information on the Organization, acceptance of applicable legal agreements and payment of applicable fees.
Scope of Certification	A description by the Organization of the products, product lines, business units, and/or geographies, which optionally could encompass an entire organization, and for which O-TTPS certification is being applied for or has been achieved. The Scope of Certification is declared in the Conformance Statement.
Specification Authority	The OTTF serves as the Specification Authority for the O-TTPS and the Assessment Methodology. The OTTF is responsible for developing, maintaining, and interpreting the O-TTPS and the Assessment Methodology.
Trademarks	The Trademarks, whether registered or not, described in Schedule 1 of the Open Trusted Technology Provider™ Standard (O-TTPS) Trademark License Agreement which the Organization has entered into with The Open Group.

2. The Certification Authority's Obligations

2.1 Certification and Re-Certification

- 2.1.1 The Certification Authority will perform all of the actions required of the Certification Authority as described in the Certification Policy.
- 2.1.2 The Certification Authority will review the Organization's Registration within six (6) business days of submission or re-submission and either approve the Registration or notify the Organization by electronic mail of what is unacceptable and request that the Organization re-submit the Registration.
- 2.1.3 The Certification Authority will review the applicable certification documents as required by the Certification Policy within twenty (20) business days of submission and notify the Organization by electronic mail with the results of the review. The Certification Authority will check that the submitted documentation is complete and well-formed and meets the criteria defined in the Certification Policy. If satisfactory, the Certification Authority will provide the necessary approvals to enable the Organization to move forward with the Assessment process. If any part of the submission is not satisfactory, the Certification Authority will provide a list of what is unacceptable and request that the Organization re-submit the documentation. Once the revised submission is received, the Certification Authority's review and approval will resume, with an additional ten (10) business days' turnaround time.
- 2.1.4 For Third-Party Assessed certification, the Certification Authority will review the Certification Package Document and notify the Organization and the Assessor of the outcome of the review within ten (10) business days of submission by the Assessor.
- 2.1.5 Once all requirements for certification have been met, the Certification Authority will award certification and notify the Organization via electronic mail that certification has been achieved.

2.2 Renewal

The Certification Authority will send a renewal reminder notice by electronic mail to the Organization at or before six (6) months prior to the annual renewal due date. The renewal terms and conditions, responsibilities, timeframes, and process for renewal are defined in the Certification Policy.

2.3 Anonymity of Appeals

In the event that the Organization desires to appeal a decision made by the Certification Authority by invoking the appeals process defined in the Certification Policy, and wishes the appeal to be anonymous, the Certification Authority will facilitate an anonymous review on behalf of the Organization. **The Organization is responsible for maintaining its anonymity in all material submitted to the Certification Authority in support of its appeal.**

2.4 O-TTPS Recognized Assessors

The Certification Authority will maintain a public register of O-TTPS Recognized Assessors. The Certification Authority will ensure that only assessors who currently meet the criteria and have a valid assessor agreement in place are listed in the register.

3. The Organization's Obligations

The Organization will perform all of the actions required of the Organization in the Certification Policy, and will promptly communicate all information required by the Certification Authority as defined in the Certification Policy. In particular, the Organization is responsible for ensuring that the names and contact information for all contacts specified in the web-based Certification System are up-to-date. Changes to such information may either be made directly in the web-based Certification System or by notifying the Certification Authority.

3.1 Registration and Payment of Certification Fees

- 3.1.1 The Organization must initiate certification by completing the Registration process. As part of this process, the Organization must formally accept the terms of this Agreement by having an authorized person sign below and must authorize payment of the applicable certification fees when due.
- 3.1.2 Unless the Certification Authority has agreed to alternative arrangements for payment in advance, payment must be made by credit card, at the time of Registration. **The Certification Authority will not progress the certification process until payment has been received.**
- 3.1.3 The certification fee covers only one resubmission of information to the Certification Authority at this stage of the process. A further fee may apply for additional resubmissions. In addition, the Certification Policy allows for one revision of the Scope of Certification once the Assessment process has commenced. Any further revision would require a new application.
- 3.1.4 The Organization must submit the certification documents as defined in the Certification Policy for review and approval by the Certification Authority. The Organization must receive such approval before proceeding with the Assessment process.

3.2 Assessment

- 3.2.1 For Third-Party Assessed certification, the Organization must engage an O-TTPS Recognized Assessor to perform the Assessment process and notify the Certification Authority of which O-TTPS Recognized Assessor has been engaged.
- 3.2.2 The Organization undertakes to designate a certification manager to coordinate with and support the Certification Authority and where applicable the Assessor performing the Assessment. The

Organization agrees to provide the Certification Authority and if applicable the Assessor with access to the certification manager and other relevant employees for the purpose of certification and Assessment.

- 3.2.3 In addition to the certification-related information provided as part of the certification and Assessment process, the Organization undertakes to answer all additional questions reasonably related to certification that the Certification Authority or the Assessor may raise and to make available for inspection all documentation and other information reasonably related to conformance with the Conformance Requirements.
- 3.2.4 For Third-Party Assessed certification, the Organization agrees to provide all required supporting evidence to the Assessor, along with references to all relevant Interpretations, Assessment Methodology Deficiencies or Certification System Deficiencies to explain any deviances from the requirements.
- 3.2.5 The Organization agrees to comply with the Certification Authority's and the Assessor's reasonable requests for clarification or rework regarding the completeness, correctness, or consistency of the provided information and documentation.

3.3 Warranty of Conformance

- 3.3.1 By signing this Agreement below, the Organization hereby warrants and represents that, to the best of the Organization's knowledge, within the Scope of Certification, the Organization meets the Conformance Requirements at the time of certification and after achieving certification will continue to meet the Conformance Requirements throughout the duration of certification, in accordance with the Certification Policy.
- 3.3.2 If the Organization fails to ensure continued conformance with the Conformance Requirements, the Certification Authority may revoke the certification, in accordance with the Certification Policy. For the avoidance of doubt, any demonstrable shortfall with respect to the Conformance Requirements within the Scope of Certification is grounds for withdrawal of certification, whether or not that shortfall is apparent from the supporting evidence supplied and the certification process itself.

3.4 Renewal

- 3.4.1 During the period of this Agreement, renewal of certification is required periodically at intervals defined in the Certification Policy. If the Organization wishes to renew, the Organization must submit an application for renewal prior to the renewal date. The renewal terms and conditions, responsibilities, timeframes, and process for renewal are defined in the Certification Policy. Failure to meet the requirements related to renewal as defined in the Certification Policy will result in deactivation of the certification in the Certification Register.
- 3.4.2 The Organization must pay the renewal fee defined in the then current certification fee schedule published by The Open Group prior to the renewal date.

3.5 Re-Certification

- 3.5.1 If the Organization wishes to increase the Scope of Certification, the Organization must apply for re-certification and follow the re-certification process defined in the Certification Policy.

4. Confidentiality

- 4.1 The Certification Authority shall, except where a provision of this Agreement provides otherwise, not disclose and maintain in confidence all information the Organization discloses to the Certification Authority in relation to this certification. No license, express or implied, under any

trademark or copyright is granted by the Organization to the Certification Authority by virtue of such disclosure and the Certification Authority shall not use any such information except for the purposes of this Agreement. The Certification Authority's obligations under this sub-clause shall be limited to taking such steps as it ordinarily takes to preserve the most important of its own confidential information, but in no case shall the Certification Authority employ less than a reasonable standard of care and discretion to avoid non-disclosure and non-use. The obligations of non-disclosure and non-use set out in this Agreement shall not apply to any item of information which:

- a. Is in the public domain at the time received by the Certification Authority or subsequently enters the public domain through no fault of the Certification Authority,
- b. Was rightfully in the Certification Authority's possession without obligation of confidence prior to its disclosure pursuant to this Agreement, or is subsequently independently developed by the Certification Authority's employees having no access to the information disclosed hereunder,
- c. Is subsequently rightfully obtained without obligation of confidence by the Certification Authority from a source other than the Organization as evidenced by written records,
- d. Is required to be disclosed by order of any court of competent jurisdiction,

PROVIDED that no right or interest under any license, patent, or otherwise shall be acquired by the recipient of any information by virtue of the application of this clause.

- 4.2 Except for disclosure to the Certification Authority for the purpose of certification, information on the Organization's Assessment and any other information about the Organization that is obtained during the Assessment process shall be held confidential with the exception that the Organization may, at their sole discretion, disclose the Assessment Report to a third party in confidence, but may not disclose the report publicly.
- 4.3 Information regarding the certification and Assessment process, including the outcome of the Assessment, shall not be disclosed in any publicly available document or to any third party by the Certification Authority or any party acting on the Certification Authority's behalf.
- 4.4 Prior to written notification from the Certification Authority indicating the award of certification, the Organization shall not disclose publicly or to any third party, other than an O-TTPS Recognized Assessor and its Assessors, any information regarding the certification process or Assessment process for the declared Scope of Certification, including progress through the process, and if applicable the Assessor's findings recorded in the Certification Package Document and the Assessment Report.
- 4.5 The Certification Authority may disclose the Organization's confidential information to those of its employees and contractors who reasonably require access to such information. Unless expressly prohibited elsewhere in this Agreement or in the Certification Policy, in the case of Third-Party Assessed certification, the Certification Authority may disclose the Organization's confidential information to the Organization's contracted O-TTPS Recognized Assessor and its Assessors. The Certification Authority may also disclose the Organization's confidential information to any third party acting on behalf of the Certification Authority and who reasonably requires access to such information. The Open Group will execute an agreement with such third party, which will include confidentiality terms equivalent to those appearing in this Clause 4, prior to sharing any of the Organization's confidential information with the third party. However, the Certification Authority may not disclose the Organization's confidential information to any employee of a member company in The Open Group, unless another exception to the obligations under this sub-clause applies. For the avoidance of doubt, the Certification Authority may

disclose the Organization's confidential information to the Organization's employees, or employees of any party acting on the Organization's behalf.

- 4.6 To enable the Organization to keep the fact of certification confidential for a period of up to six (6) months from the date of written notice by the Certification Authority that certification has been achieved (the "Delayed Listing Period"), the Organization's identity and the fact of certification will be kept confidential subject to the disclosure and use restrictions set out in this clause. During this period, the Organization may not publicly claim that it is or has been certified, use the Trademarks, or make any representation of conformance to the O-TTPS or the Program's Conformance Requirements without first informing the Certification Authority that the Delayed Listing Period has expired. Certification information will cease to be held confidential upon the earlier of notice by the Organization that the Delayed Listing Period has expired or at the end of the six-month period, provided that the Organization has not requested withdrawal and deletion of such information.

5. Liability and Indemnity

5.1 Liability

THE ORGANIZATION ACKNOWLEDGES THAT BECAUSE OF THE SPECIAL NATURE OF THE ACCREDITATION AUTHORITY IT IS REASONABLE FOR THE ACCREDITATION AUTHORITY TO EXCLUDE LIABILITY AS SET OUT BELOW AND FOR THE ORGANIZATION TO TAKE MEASURES, INCLUDING INSURANCE WHERE APPROPRIATE, TO MITIGATE OR PREVENT ANY POTENTIAL LOSSES THAT MAY ARISE (PROVIDED THAT SUCH MEASURES ARE NOT IN BREACH OF THIS AGREEMENT).

THE ACCREDITATION AUTHORITY ON ITS OWN BEHALF AND ON BEHALF OF ITS OFFICERS, EMPLOYEES AND AGENTS HEREBY EXCLUDES ALL LIABILITY, WHETHER IN CONTRACT, TORT OR OTHERWISE, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE USE OR NON-USE BY ANY PERSON OF ANY INFORMATION PROVIDED BY THE ACCREDITATION AUTHORITY TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW.

IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT OR CONSEQUENTIAL LOSSES (INCLUDING, WITHOUT LIMITATION, ANY LOSS OF PROFITS, CONTRACTS, PRODUCTION OR USE).

5.2 Indemnity

5.2.1 Organization's Obligations

If a third party asserts a claim against The Open Group, the Organization hereby agrees, at its expense, to defend, indemnify and hold The Open Group and its respective officers, agents and employees (the "Indemnitees") harmless from such claim (whether criminal or civil, in contract, tort, or otherwise) by defending Indemnitees at the Organization's expense and paying all direct damages (including attorney's fees, court costs and expert's fees) that a court finally awards against Indemnitees or that are included in a settlement approved in advance by the Organization, provided that the claim arises out of:

- a. Allegations that Organization's products bearing the Trademarks do not meet the Conformance Requirements (but only to the extent The Open Group has performed its obligations set forth in this Certification Agreement); and/or
- b. The misuse of the Trademarks by the Organization or on the Organization's behalf; and/or
- c. The Organization's failure to discontinue its use of the Trademarks pursuant to The Open Group's right to withdraw permission to use the Trademarks pursuant to this Agreement.

PROVIDED that:

- a. This Indemnity shall not apply in respect of any act done by the Organization on the express instructions of The Open Group, and
- b. The Organization (together with any other Organizations under the Trademarks affected by such claims) shall have the conduct of such claims but shall consult fully with The Open Group before taking any action or making any admission or settlement, which may adversely affect The Open Group's interests.

5.2.2 Interpretation

Any provision of Sub-clause 5.2.1 above shall not apply in any circumstances or in respect of any liability or class of liability to the extent that it may not apply in accordance with applicable law. In the event of such a provision being held to be inapplicable or invalid, the Parties will make such amendments to this Agreement by the addition or deletion of wording, or otherwise, as to remove the inapplicable or invalid part of the provision but otherwise retain the provision to the benefit of The Open Group to the maximum extent permissible under applicable law.

5.2.3 Damages

In no event shall The Open Group be liable for any damages, including without limitation, loss of profits, arising from or related to Licensee's use of the Trademarks or the Termination of this Agreement, even if The Open Group has notice of the possibility of such damages.

6. General

6.1 Entire Agreement

This Agreement including any documents referred to herein (as amended from time to time) together with all other forms relating to this Agreement submitted and accepted by both Parties constitutes the entire agreement and supersedes all prior oral or written agreements, understandings, or arrangements between the Parties relating to such subject matter. Neither Party shall be entitled to rely on any agreement, understanding, arrangement, or representation relating to the subject matter of this Agreement which is not expressly contained in this Agreement and no change may be made to this Agreement except in writing and signed by duly authorized representatives of both Parties.

6.2 Waiver of Rights under this Agreement

No failure or delay on the part of either of the Parties to exercise any right or remedy under this Agreement shall be construed or operate as a waiver thereof nor shall any single or partial exercise of any right or remedy preclude the further exercise of such right or remedy as the case may be.

6.3 Notices

Any notice or other document to be given under this Agreement shall be in writing in the English language and sent by post or by email to the addresses set out in this Agreement, in the case of the Organization the address currently on record in the web-based Certification System for the Authorized Signatory, or such other address as either Party shall notify to the other in writing for this purpose. Notices shall be deemed to be effective upon receipt by the Party to which notice is given or within the 5th day following the mailing or transmission, whichever occurs first.

6.4 Interpretation

The headings in this Agreement are inserted only for convenience and shall not affect its construction.

Where appropriate, words denoting the singular only shall include the plural and vice versa.

6.5 Term and Termination

This Agreement comes into effect upon the date of last signature of the Parties hereto, and will expire only if explicitly terminated:

- a. At any time upon six (6) months' written notice by either Party to the other; or
- b. If a period of thirty (30) days has elapsed from one Party notifying the other Party of a breach of this Agreement or of the terms of the Certification Policy or Conformance Requirements, and such a breach has not been rectified to the satisfaction of the other Party.

Notwithstanding the termination of this Agreement for any reason, the obligations of non-disclosure in respect of any confidential information disclosed prior to such termination shall survive for a period of five (5) years following such termination.

6.6 Governing Law

This Agreement shall be governed by the laws of the Commonwealth of Massachusetts and the Parties hereby submit to the non-exclusive jurisdiction of the Massachusetts courts.

7. Payment of Fees

- 7.1. The fees are listed in the web-based Certification System and are quoted net of all applicable taxes and duties that, where appropriate, will be payable in addition by the Organization to the Certification Authority or to the relevant tax authorities as applicable.
- 7.2. The Certification Authority will charge the applicable certification fee during Registration and annually thereafter.
- 7.3. Fees are payable in U.S. dollars.
- 7.4. Unless the Certification Authority has agreed to alternative arrangements for payment, fees must be paid by credit card in advance.
- 7.5. Fees are non-refundable.

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8. Execution

By signing below, the Parties agree to be bound by this Certification Agreement, the Certification Policy, and the Conformance Requirements. In the event of any conflict between the terms of these documents, the terms of this Certification Agreement shall take precedence.

AGREED by the Parties through their authorized signatories:

FOR AND ON BEHALF OF

FOR AND ON BEHALF OF

The Organization

The Open Group

Signed

Signed

Name

Name

Title

Title

Date

Date

Facsimile Number: _____

Facsimile Number: +1 240 250 6102

Email: _____

Email: legal@opengroup.org

Address: _____

800 District Avenue, Suite 150

Burlington, MA 01803, USA

Please complete and email (scanned/ PDF) or fax a signed copy of this document to legal@opengroup.org. The Open Group will countersign and return a fully executed copy to the email address or fax number provided above. If preferred, you may just complete, sign and send this signature page.
