

# ArchiMate<sup>®</sup> Tool

## Certification and Trademark License Agreement

February 2017, Version 1.1

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

### WHEREAS:

1. The Supplier wishes to submit a product for certification in The Open Group ArchiMate<sup>®</sup> Tool Certification Program ("Certification Program") against applicable ArchiMate<sup>®</sup> Tool Certification Conformance Requirements;
2. The product is uniquely defined in the Registration Form; and,
3. The Open Group is the Certification Authority operating the Certification Program in accordance with the terms of The Open Group Architecture Tool Certification Policy.

**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:

<b>Certification Authority</b>	The organization that manages the day-to-day operations of the Certification Program in accordance with the Certification Policy. The Open Group acts as the Certification Authority for ArchiMate <sup>®</sup> Tool Certification.
<b>Certification Policy</b>	The Open Group Architecture Tool Certification Policy document, as amended from time to time by The Open Group and made available on The Open Group website.
<b>Certification Register</b>	The official list of all Certified Products, which is maintained by the Certification Authority and made publicly available on The Open Group website.
<b>Certification System Deficiency</b>	An agreed error in the certification system that is inhibiting the certification process. A Certification System Deficiency is one possible outcome of a Problem Report.
<b>Certified Product</b>	A product that has successfully completed the certification process and for which the Supplier of such product has been notified in writing by the Certification Authority that certification has been achieved and for which such certification is still in force.
<b>Conformance Requirements</b>	A definition of the mandatory and optional behavior or functionality a product must implement in order to be considered conformant. In some programs this may take the form of a list of all possible behaviors with no distinction between mandatory and optional behavior. The Conformance Requirements are defined in an ArchiMate <sup>®</sup> Tool Certification Conformance Requirements document,

	available from The Open Group website.
<b>Conformance Statement</b>	The Supplier's documented set of claims describing precisely the way in which the product meets the Conformance Requirements, including, if applicable, which optional features are supported. It also provides a precise identification of the Certified Product.
<b>Interpretation</b>	Decision made by the that elaborates or refines the meaning of the applicable specification, or a standard referenced therein. An Interpretation is one possible outcome of a Problem Report.
<b>Person</b>	Includes a body of persons whether or not incorporated.
<b>Problem Report</b>	A question of clarification, intent, or correctness of a specification, or the certification system, which, if accepted by the Specification Authority, will be resolved into an Interpretation or Certification System Deficiency, respectively.
<b>Registration Form</b>	A form completed by either the Supplier to register a particular Product for certification. The form contains information on the Supplier and the Product to be certified.
<b>Specification Authority</b>	The Open Group ArchiMate Forum, which is responsible for developing, maintaining, and interpreting the specification(s).
<b>Tool Certification Checklist</b>	This document provides a mapping between the supporting evidence supplied with a certification submission and the Conformance Requirements. The document is used in conjunction with the applicable ArchiMate Tool Certification Conformance Requirements for the Certification Program, to determine whether the architecture tool meets the Conformance Requirements.
<b>Tool Certification Mark</b>	The trademarks and taglines as designated from time to time by The Open Group for use in association with certified tools.

## 2. The Certification Authority's Obligations

### 2.1 Certification

The Certification Authority will audit all certification-related information provided by the Supplier including the Conformance Statement and Tool Certification Checklist. The Certification Authority will check to make sure the submitted information demonstrates that the product meets the applicable Conformance Requirements.

The Certification Authority will complete the audit and notify the Supplier via electronic mail of the audit result within 10 business days of receipt of a complete submission. If an incomplete submission is received, the supplier will be notified within 10 business days via electronic mail with a list of all the missing or incomplete items. Once the completed submission is received, the audit will resume, with an additional 10 business day turnaround.

If the audit indicates that the Conformance Requirements have been met, the Certification Authority will notify the Supplier via electronic mail of the successful certification, and, if confidentiality has not been requested as in Clause 4.3 below, enter the Certified Product into the Certification Register.

If the audit indicates that the Conformance Requirements have not been met, the Certification Authority will notify the Supplier of the deficiencies that must be corrected within 60 calendar days for certification to be successful. The certification fee covers only one set of corrective actions and resubmission. A further fee may apply for additional work beyond this.

## **2.2. Renewal**

When a Certified Product is due for renewal of certification, the Certification Authority will send a renewal reminder notice by electronic mail to the Supplier at or about 60 days but no less than 45 days prior to the renewal due date.

## **2.3. Anonymity of Appeals**

In the event that the Supplier desires to appeal a decision made by The Open Group by invoking the appeals process defined in the Certification Policy, and wants the appeal to be anonymous, the Certification Authority will facilitate an anonymous review on behalf of the Supplier.

# **3. The Supplier's Obligations**

In addition to the certification-related information provided as part of the registration process, the Supplier undertakes to answer all reasonable additional questions the Certification Authority may raise.

## **3.1. Registration and Payment**

The Supplier must complete a Registration Form, thoroughly defining the product to be certified. To complete the submission, the Supplier must formally accept the terms of this Agreement by having an authorized person sign below.

The Supplier must authorize payment of the initial and subsequent certification fees when due, according to the fee schedule published on The Open Group website. Unless the Certification Authority has agreed alternative arrangements for payment in advance, payment must be made by credit card, at the time of registration. The Certification Authority will not process the registration until payment has been received.

## **3.2. Certification**

The Supplier agrees to provide the Conformance Statement, Tool Certification Checklist, and all required supporting evidence to the Certification Authority, along with references to all relevant Interpretations or Certification System Deficiencies to explain any deviations from the requirements. The Supplier also agrees to comply with the Certification Authority's reasonable requests for clarification or rework regarding the completeness, correctness or consistency of the provided information.

## **3.3. Warranty of Conformance**

By signing in Clause 10 "Execution" below, the Supplier hereby warrants and represents that the product identified in the Registration Form, as entered in the certification system, meets the Conformance Requirements at the time of certification and will continue to meet the Conformance Requirements throughout the time during which the product is certified, in accordance with the Certification Policy. If the Supplier fails to ensure continued compliance with the Conformance Requirements, the Certification Authority may revoke the certification for the product. For the avoidance of doubt, any demonstrable shortfall with respect to the Conformance Requirements 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**

During the period of this Agreement, renewal by the Supplier may be required periodically at intervals defined in the Certification Policy. If applicable, failure to renew within 30 days after the due date will result in removal of the Certified Product from the Certification Register. Renewal incurs a renewal fee.

# **4. Confidentiality**

**4.1.** The Certification Authority shall, except where a provision of this Agreement provides otherwise, maintain in confidence all information the Supplier discloses to the Certification Authority in relation to this certification. No license, express or implied, under any trademark or copyright is granted by the

Supplier 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. 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 any time (but without prejudice to any Person's rights of action against another Person who wrongfully causes or permits such information to be in the public domain),
- b. Was rightfully in the receiving Person's possession without obligation of confidence prior to its disclosure pursuant to this Agreement, or is subsequently independently developed by the receiving Person's employees having no access to the information disclosed hereunder,
- c. Is subsequently rightfully obtained without obligation of confidence by the receiving Person from a source other than the Supplier 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.** The Certification Authority may disclose the Supplier confidential information to those of its employees and contractors who reasonably require access to such information. However, the Certification Authority may not disclose the Supplier'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 Supplier's confidential information to the Supplier's employees, or employees of any party acting on the Supplier's behalf.

**4.3.** To enable the Supplier 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 the product has achieved certification, the Supplier's identity, the fact of certification, and the name of the Certified Product (the Certification Information) will be kept subject to the disclosure and use restrictions set out in this clause. During this period, the Supplier may not publicly claim that the Certified Product is or has been certified, or make any representation of the Certified Product's compliance with the ArchiMate® Specification(s) without first informing the Certification Authority that the confidential period has expired. Certification Information will cease to be held confidential upon the earlier of notice by the Supplier that the confidential period has expired or at the end of the six-month period, provided that the Supplier has not requested withdrawal and deletion of such information.

## **5. Liability and Indemnity**

### **5.1. Liability**

THE SUPPLIER ACKNOWLEDGES THAT BECAUSE OF THE SPECIAL NATURE OF THE CERTIFICATION AUTHORITY IT IS REASONABLE FOR THE CERTIFICATION AUTHORITY TO EXCLUDE LIABILITY AS SET OUT BELOW AND FOR THE SUPPLIER 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 CERTIFICATION 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 CERTIFICATION AUTHORITY TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW. IN NO EVENT SHALL THE CERTIFICATION AUTHORITY BE LIABLE FOR ANY INDIRECT OR CONSEQUENTIAL LOSSES (INCLUDING, WITHOUT LIMITATION, ANY LOSS OF PROFITS, CONTRACTS, PRODUCTION OR USE).

## 5.2. Indemnity

The Supplier shall indemnify and hold harmless the Certification Authority together with its officers, servants, agents, subcontractors, and shareholders of the Certification Authority and their servants when engaged in activities on behalf of the Certification Authority but only to the extent that they are acting in that capacity (together the "Indemnified") against any and all demands, claims, and liability for direct losses, damages, settlements and costs (including lawyers' fees) of any nature whatsoever asserted against or suffered by the Indemnified, but limited to demands and claims from a third Person, and liability incurred from such demands, and claims arising out of the Candidate's supply of services related to ArchiMate<sup>®</sup> Tool Certification, or the Supplier's manufacture, use, or supply of the Products related to ArchiMate<sup>®</sup> Tool Certification, provided that

- a. any such demand and claim is based on the Certification Program under this Agreement and not caused by any criminal action, gross negligence or tort by the Indemnified,
- b. the Indemnified notifies the Supplier within ten days of any such demand and claim, and refrains from any action on account of such demand and claims which may prejudice the Supplier, and
- c. the Supplier is given full authority and sole control to defend and settle any such demands and claims.

The Certification Authority shall take all reasonable steps to limit such damage or loss.

No provision of this clause shall 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, so as to remove the inapplicable or invalid part of the provision but otherwise retain the provision to the extent permissible under applicable law.

## 6. General

### 6.1. Entire Agreement

This Agreement including any documents referred to therein (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.

Notwithstanding the above, The Open Group may introduce changes to this Agreement as may be required by the Program. In such cases, changes shall immediately take effect by a mutually signed amendment, executed no later than the anniversary date of this Agreement.

### 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, except in circumstances where this Agreement specifically provides for notices by electronic mail, shall be sent by post or by email to the addresses set out in this Agreement 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 5<sup>th</sup> 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. Likewise, the Indemnity clauses of this Agreement shall survive the termination of this Agreement.

#### 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. Fees

The fees are listed on the Certification Authority's website and are quoted net of all applicable taxes and duties that, where appropriate, will be payable in addition by the Supplier to the Certification Authority or to the relevant tax authorities as applicable.

#### Payment

The Certification Authority will charge the applicable certification fee upon submission of a completed application and subsequently thereafter according to the fee schedule. The certification fee covers only one resubmission of information to the Certification Authority. A further fee may apply for additional resubmissions.

The Supplier agrees to incur the applicable fee for each application.

Fees are payable in U.S. dollars. Unless the Certification Authority has agreed alternative arrangements for payment, fees must be paid by credit card in advance. Fees are non-refundable.

### 8. Tool Certification Mark

The Open Group Tool Certification Mark logo and any of its component parts shown in the sample below.



The Open Group Tool Certification Mark is a combination of The Open Group Certification Mark with a check symbol forming the word “Open”, “The Open Group”, “Certified”, a separator bar, the Label used to indicate the requirements against which a tool is certified (i.e., “ArchiMate® 3” or “ArchiMate® 2”) and the word “Tool”.

## **9. Right to Use the Tool Certification Mark**

**9.1** The Tool Certification Mark shown in Clause 8 is a trademark and ArchiMate® is a registered trademark of The Open Group.

Unlike rights derived from patents and copyrights, which provide protection for only a limited number of years, trademark rights can last forever. Trademark rights can also be lost forever. The exclusive right granted in a trademark is usually lost as a result of careless or improper use, usually by allowing the mark to be used as generic or descriptive words for products. All of the following were once valuable trademarks in the U.S.A.: aspirin, escalator, cellophane, zipper, shredded wheat, corn flakes and kerosene. All became common or generic words because their owners did not use them carefully and correctly and did not prevent the improper use of them by others. Some of the clauses in this section governing the use of the Tool Certification Mark are inserted to enable The Open Group to preserve the Tool Certification Mark for the benefit of the IT community.

**9.2.** The Supplier, its agents and its product distributors, may use the Tool Certification Mark only on or in relation to a product that appears in the Certification Register and only with a Label applicable to the Conformance Requirements the product has met.

Use is permitted (and encouraged):

- on the packaging of software and its media
- in manuals for software
- on the log-in screen of a device with a graphics screen
- on websites
- in presentations
- on training manuals and other materials
- on marketing collateral

**9.3.** When an entry is removed from the Certification Register, the permission to use the Tool Certification Mark on or in relation to that product is withdrawn. Users of the Tool Certification Mark must cease their use in connection with such products as soon as is reasonably practicable following their removal from the Certification Register.

**9.4.** Where the Tool Certification Mark appears on the Internet it must be hyperlinked to the ArchiMate® Certification web page <https://certification.opengroup.org/register/archimate-tool>.

**9.5.** All use of the Tool Certification Mark in advertisements, display boards, promotional material and product catalogues must be in relation to Certified Products only. If an advertisement, document or other material refers both to such products and to other products, the Tool Certification Mark must not be used in such a way as to suggest that all the products being advertised are certified.

**9.6.** The Tool Certification Mark must not be juxtaposed to other symbols or text in such a way as to show a connection with them.

The Tool Certification Mark, whenever and wherever it appears, must be distinguished from the surrounding text. This applies to all forms of printed media, including advertising copy, product packaging, brochures, manuals, internal memoranda, editorial, articles, correspondence, presentation materials, videos, and the Internet.

The Tool Certification Mark must stand alone, be strictly adhered to, and be surrounded by a generous amount of space. It must not be enclosed within a contrived shape, used as part of or in association with other symbols, names, graphics, or logos. The Tool Certification Mark image files,

provided by The Open Group, include the surrounding space required when the Tool Certification Mark is displayed on monitors or the Internet.

**9.7.** The graphical design of the Tool Certification Mark must be strictly adhered to and the image files of the Tool Certification Mark provided by The Open Group must be used, must always appear in the colors and font specified, and should never be altered in any way except it may be reduced in size.

**9.8.** The Tool Certification Mark must never be superimposed on or used in association with other graphics or logos.

**9.9.** The Tool Certification Mark must not be used in conjunction with product names under any circumstances.

**9.10.** The first or most significant occurrence of the Tool Certification Mark must be marked and must have the required attribution as a footnote. The attribution should use the ® symbol for a registered trademark and the ™ symbol for an unregistered trademark. It is acceptable to use an asterisk in place of the trademark symbol where the medium used (for example, electronic mail) cannot reproduce the ™ or ® symbols. However, this does not authorize use of the asterisk as the norm. The attribution may be translated to national languages.

**9.11.** Blanket or generic attributions, such as: "All trademarks are the property of their respective owners," are not acceptable. Correct attributions are, for example: "The Open Group Tool Certification Mark is a trademark and ArchiMate® is a registered trademark of The Open Group."

**9.12.** The Open Group reserves the right to change its trademarks at any time at its discretion. In such event, existing use of the unchanged version is permitted to continue in the short term, but users should transition to the changed version as soon as possible.

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## 10. Execution

By signing below, the Supplier agrees to be bound by this Agreement, the Certification Policy, and the Conformance Requirements.

AGREED by the Parties through their authorized signatories:

FOR AND ON BEHALF OF

\_\_\_\_\_  
**The Supplier**

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Facsimile Number: \_\_\_\_\_

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

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

FOR AND ON BEHALF OF

**The Open Group**

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Facsimile Number: +1 240 250 6102

Email: legal@opengroup.org

800 District Avenue, Suite 150

Burlington, MA 01803-5007

United States of America

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Please complete and email (scanned/PDF) 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 provided above. If preferred, you may just complete, sign, and send this signature page.  
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