

# The Open Group Certified Technical Specialist (Open CTS) Program

## Certification Agreement

Issue 1.0, January 15, 2008

### Note

PLEASE READ THE FOLLOWING TERMS AND CONDITIONS BELOW. IF YOU ACCEPT ALL OF THE TERMS CONTAINED IN THIS AGREEMENT, YOU SHOULD INDICATE THIS BY SIGNING AT THE BOTTOM OF THIS AGREEMENT.

This Certification Agreement ("Agreement") is made and entered into by and between the following Parties: The Open Group, Apex Plaza, Forbury Road, Reading, England, RG1 1AX , and You ("the Candidate").

Whereas, the Candidate wishes to apply for certification in **The Open Group Technical Specialist Certification** program ("the Certification Program"); and Whereas, the Candidate is uniquely defined in the Registration Form; and Whereas, The Open Group is the Certification Authority operating the Certification Program in accordance with the terms of the Technical Specialist 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:

Candidate	The individual who is in the process of being certified.
Certification Board	The group of subject matter experts appointed by the Certification Authority or by an Accredited Certification Program to assess applications for certification.
Certification Package	The detailed description of the skill levels attained and experience undergone that provides the Certification Authority or Accredited Certification Program with sufficient information to determine whether the Candidate meets the Conformance Requirements. It is created by completing the Certification Package template provided by the Certification Authority.
Certification Policy	The "The Open Group Certified Technical Specialist (Open CTS) Program Certification Policy" document, as amended from time to time by The Open Group, available at <a href="http://www.opengroup.org/opencits/cert/docs">http://www.opengroup.org/opencits/cert/docs</a> .
Certification System Deficiency	An agreed error in the Certification and/or Certification System, which is inhibiting the certification process. A Certification System Deficiency is one possible outcome of a Problem Report.
Conformance Requirements	A definition of the mandatory and optional requirements a person must meet in order to be considered conformant, documented in the " The Open Group Certified Technical Specialist (Open CTS) Program Conformance Requirements" as amended from time to time by The Open Group, available at <a href="http://www.opengroup.org/opencits/cert/docs">http://www.opengroup.org/opencits/cert/docs</a> .  The Conformance Requirements define a number of Client Focus Areas, Technical Focus Areas and Streams. Candidates may apply for certification against one Client Focus Area and one Stream within one Technical Focus Area.
Directory of Certified IT Specialists	The official list of all Certified Technical Specialists, which is maintained by the Certification Authority and made publicly available via the Internet.

Evaluation Process	The documented process by which the Certification Authority determines whether a Candidate has met the Conformance Requirements. The Evaluation Process consists of evaluation procedures and criteria.
Evaluation Process Deficiency	An agreed error in the Evaluation Process used to evaluate whether a Candidate meets the Conformance Requirements, which impacts certification. An Evaluation Process Deficiency is one possible outcome of a Problem Report.
Interpretation	Decision made by the Specification Authority that elaborates or refines the meaning of the Conformance Requirements, Certification Policy, Accreditation Requirements, Accreditation Policy, or a standard or best practice referenced therein. An Interpretation is one possible outcome of a Problem Report.
Person	Includes a body of persons whether or not incorporated.
Program Logo	The logo or other trademarks as designated from time to time by The Open Group for use within The Open Group Technical Specialist Certification Program in relation to Certified Technical Specialists.
Registration Form	The web form completed by the Candidate to register themselves for certification. The form contains information on the Candidate to be certified.
Specification Authority	The Open Group IT Specialist Certification working group, or its successor, which is responsible for developing, maintaining, and interpreting the Certification Policy, Conformance Requirements, Accreditation Policy and Accreditation Requirements of the Program.

## 2. The Certification Authority's Obligations

### Certification

The Certification Authority will provide a means for the Candidate's Certification package to be uploaded.

The Certification Authority will audit all certification-related information provided by the Candidate, including supporting evidence. The Certification Authority will check to make sure the submitted information demonstrates that the Candidate meets the applicable Conformance Requirements.

The Certification Authority will, within 10 business days of receipt, carry out an initial review to ensure the Certification Package is complete and well-formed. If a complete and well-formed Certification Package is received, the Certification Authority will assign the Candidate to a Certification Board for the next stage of evaluation. If an incomplete or incorrectly formed Certification Package is received, the Candidate will be promptly notified via electronic mail of all the missing or incorrectly formed items, and will be invited to make corrections and re-submit the Certification Package for evaluation.

If an incomplete submission is received, the Candidate 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 initial audit will resume, with an additional 10 business day turnaround.

The Certification Authority will assign the Candidate to the next available Certification Board for evaluation, unless the Candidate has expressed a preference for attendance at a specific scheduled board. Certification Boards will meet at a time and place of the Certification Authority's choosing according to demand, but will normally be convened no less frequently than quarterly.

For each level of certification the process for evaluation of conformance shall occur as described in the Certification Policy and Conformance Requirements. Some classes of certification require Candidates to attend their assigned Certification Board in person. Other classes of certification require Candidates to participate in their Certification Board by a series of telephone interviews. In either case the Certification Authority will not provide Candidates with any monetary or other assistance with travel, subsistence or other expenses incurred, or any compensation for loss of earnings or revenues, in connection with attendance at the Certification Board.

After assignment to a Certification Board, Candidates may, with no less than 30 days notice, request a postponement to the next available Certification Board. Failure to attend the assigned Certification Board with less than 30 days notice will result in the application being terminated without any refund of fees.

The Certification Authority will contact the Candidate with the result of the Evaluation Process within 6 business days of receiving the Evaluation report from the Certification Board.

If the Evaluation report indicates that the applicable Conformance Requirements have been met, the Certification Authority will notify the Candidate via electronic mail of the successful evaluation, and enter the Candidate into the Directory of Certified Technical Specialists once the Candidate has accepted the Trademark License Agreement.

If the Evaluation indicates that the Conformance Requirements have not been met, the Certification Authority will notify the Candidate of the deficiencies. The Candidate may undertake corrective action and re-apply after a minimum period of three months. The certification fee covers only one evaluation. A further fee will apply for a re-application.

### **Re-Certification**

Re-certification is required every three years according to the Certification Policy. The Certification Authority will send a re-certification reminder to Certified Specialists 120 days and 90 days before Certification expires. The Certification Authority will process Certification Packages for re-certification in the same manner as for Certification, except that where the class of certification originally required physical attendance at a Certification Board this will not normally be required.

### **Anonymity of Appeals**

In the event that the Candidate desires to appeal a decision made by The Open Group or the Certification Board 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 Candidate according to the Certification Policy.

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

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

The Candidate undertakes to cooperate with the Certification Board to undertake the Evaluation Process.

### **Registration and Payment of Certification Fee**

The Candidate must complete a web-based registration form, providing details about themselves and the Client Focus Area and the Stream within the Technical Focus Area against which they are applying for certification and **must formally accept the terms of this Agreement, by clicking on the 'I ACCEPT' button below.**

Payment of the Certification Fee is required to complete initial entry to the program. Payment must be by credit card at the time of registration or by other means agreed in advance by the Certification Authority, such as pre-payment by the Candidate's employer.

The Certification Authority will not start the certification process until payment has been received.

### **Certification**

The Candidate agrees to provide a Certification Package and all required supporting evidence to the Certification Authority and the Certification Board, along with references to all relevant Interpretations,

Certification System Deficiencies, or Evaluation Process Deficiencies to explain any deviations from the requirements. The Candidate also agrees to comply with the Certification Authority's and the Certification Board's reasonable requests for clarification or rework regarding the completeness, correctness or consistency of the provided information.

### **Annual Program Participation Fees**

The Certification Fee covers participation in the program for the first year of certification. For the second and subsequent years of certification the Candidate agrees to pay the annual Program Participation Fee . The Certification Authority will send a payment reminder notice by electronic mail to the Candidate at least one month prior to the payment due date.

### **Re-certification**

The Candidate agrees to tri-annual Re-Certification according to the Certification Policy and agrees to pay the re-certification fee, which includes the Annual Program Participation fee for the following year.

Failure to apply for re-certification before the end date will result in certification being terminated.

### **Warranty of Conformance**

By signing, the Candidate hereby warrants and represents that he/she meets the applicable Conformance Requirements at the time of certification and will continue to meet the Conformance Requirements throughout the time in which they are certified, in accordance with the Certification Policy. If the Candidate fails to ensure continued compliance with the applicable Conformance Requirements, the Certification Authority may revoke the certification for the Candidate. For the avoidance of doubt, any demonstrable shortfall with respect to the applicable 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.

## **4. Confidentiality**

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

- ii. The Certification Authority may disclose the Candidate's confidential information to those of its employees who reasonably require to have access to such information and to members of a Certification Board.

- iii. The Candidate acknowledges and accepts that the Certification Authority may make use of commercial third party printing and distribution services to make the Candidate's Certification Package available to the members of the Certification Board.

## **5. Liability and Indemnity**

### **5.1 Liability**

THE CANDIDATE 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 CANDIDATE 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, INCLUDING CERTIFICATION BOARD MEMBERS 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 Candidate shall indemnify and hold harmless the Certification Authority together with its officers, servants, agents, subcontractors, and shareholders of the Certification Authority, Certification Board members, 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 Technical Specialist related Services, 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 Candidate 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 Candidate, and
- c. the Candidate 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**

### **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 or referred to in this Agreement and no change may be made to this Agreement except in writing and signed by duly authorized representatives of both Parties.

### **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.

### **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 deemed to have been duly given if sent by hand or by recorded delivery or registered post, or by facsimile (subsequently confirmed by post) to a party at the specified address for that party, unless a different address has been notified to the other in writing for this purpose. The specified address for the Certification Authority is the address set out above, and the specified address for the Candidate is the address provided for on the Registration Form, as entered into the web-based certification system. Notices shall be deemed to have been received by the addressee within 72 hours of posting as above, or within 24 hours if sent by hand or facsimile to the addressee's correct address.

### **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.

### **Term and Termination.**

This Agreement comes into effect at the date of acceptance and will expire only if explicitly terminated:

1. At any time upon six months' written notice by either Party to the other; or
2. If a period of 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, 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 5 years following such termination.

### **Governing Law**

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

### **7. Fees**

The Fees described at [http://www.opengroup.org/opencits/cert/docs/OpenCITS\\_Fee\\_Schedule.html](http://www.opengroup.org/opencits/cert/docs/OpenCITS_Fee_Schedule.html) are quoted net of all applicable taxes and duties which, where appropriate, will be payable by the Candidate to the Certification Authority (or to the relevant tax authorities as applicable) in addition.

### **Payment**

The Certification Authority will charge the applicable certification fee upon submission of a completed application. The Candidate agrees to incur the applicable fee for each application.

Fees are payable in U.S. dollars and will be debited against the credit card provided to the Certification Authority in the web-based certification system. Fees are non-refundable.

## 8. Execution

By signing below, the Candidate:

1. **Hereby acknowledges reading and understanding this agreement.**
2. **Agrees to be bound by the terms of the Certification Policy and this Certification Agreement.**
3. **Warrants and represents that the Candidate as identified by the name defined in the Registration Form, as entered in the web-based certification system, meets the applicable Conformance Requirements.**
4. **Warrants that NO MATERIAL CHANGES have been made to this Agreement since it was made available to the Candidate by the Certification Authority in an electronic format;**

**and by signing, the Candidate agrees that all these obligations, and those described in the Confidentiality and Indemnity clauses of this Agreement shall survive the termination of this Agreement.**

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

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

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

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

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