

The Open Group[®] Product Certification Portfolio

Certification Agreement

September 2024, Version 1.0

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

WHEREAS:

1. The Supplier wishes to certify a Product under a certification program ("the Program") within The Open Group Product Certification Portfolio; 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:

Body of Knowledge	The collection of normative documents from which the Conformance Requirements are derived.
Certificate	An electronic document issued to a Supplier formally declaring that a Product successfully conforms to the applicable Conformance Requirements and is a Certified Product.
Certification Agreement	The agreement between the Supplier and the Certification Authority that defines the certification service to be provided and contains the legal commitment by the Supplier to the conditions of the Program.
Certification Authority (CA)	The organization officially sanctioned to manage the day-to-day operations of the certification program in accordance with the policies defined in the Certification Policy. Note: The Open Group is the Certification Authority for the Program.
Certification Guide	The document that describes the processes for how a Supplier achieves certification.
Certification Logo	The certification mark or other marks as designated by The Open Group for use in association with the Program.
Certification Policy	The document that defines the policies that govern the operation of the Program.

Certification Register	The official list of all Certified Products, which is maintained by the Certification Authority and made publicly available on the Certification Authority's website.
Certification System	The software and hardware information systems and the supporting certification documents used in the certification process.
Certified Product	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 such certification is still in force.
Conformance Requirements	The rules (shall, must) and recommendations (should, may) described in the Body of Knowledge that convey the criteria to be fulfilled.
Conformance Statement	The document in which the Supplier declares which Profile(s) the Product or Test Tool supports, including which optional features are supported.
Product	A Supplier's commercial offering that implements the applicable Conformance Requirements.
Profile	A documented and logical set of Conformance Requirements that defines the capabilities a Product must support in order to be certified.
Recognized Verification Entity	An independent organization that has met the criteria for a Recognized Verification Entity and is authorized by the Certification Authority to perform Verification for the Program.
Recognized Verification Entity Register	The official list of all Recognized Verification Entities, which is maintained by the Certification Authority and made publicly available on the Certification Authority's website.
Supplier	The organization that is either applying for certification or has certified a Product in the Program.
Specification Authority	The Open Group Forum or Consortium that is responsible for interpreting the Body of Knowledge and the program-specific requirements. The Forum or Consortium is identified in the Program's configuration document.
Test Tool	A tool used to verify the conformance of a Product to a Profile(s).
Trademark License Agreement (TMLA)	The agreement that contains the legal commitment by the Supplier to the conditions for use of the Certification Logo.
Trademarks	The Trademarks, whether registered or not, described in Appendix 1 of The Open Group Product Certification Portfolio Trademark License Agreement which the Supplier has entered into with The Open Group.
Verification	The process where a Recognized Verification Entity performs testing and/or assessment of a Product against the applicable Conformance Requirements.
Verification Matrix	A document that identifies the Conformance Requirements for each Profile and describes how those Conformance Requirements will be verified.

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 applicable certification documents as required by the Certification Policy within ten (10) business days of submission and notify the Supplier 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 any part of the submission is not satisfactory, the Certification Authority will provide a list of what is unacceptable and request that the Supplier re-submit the documentation. Once the revised submission is received, the Certification Authority's review and approval will resume, with ten (10) business days to notify the Supplier by electronic mail with the results of the review.
- 2.1.3. Once all requirements for certification have been met, the Certification Authority will award certification and notify the Supplier via electronic mail that certification has been achieved.

2.2. Maintaining Certification

The Certification Authority will send an annual fee notice by electronic mail to the Supplier at or before two (2) months prior to the expiry date.

2.3. Anonymity of Appeals

In the event that the Supplier 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 Supplier. **The Supplier is responsible for maintaining its anonymity in all material submitted to the Certification Authority in support of its appeal.**

2.4. Recognition of Verification Entities

The Certification Authority will maintain a public register of the Program's Recognized Verification Entities. The Certification Authority will ensure that only Recognized Verification Entities who currently meet the criteria and have a valid Recognized Verification Entity agreement in place are listed in the Recognized Verification Entity register.

3. The Supplier's Obligations

The Supplier will perform all of the actions required of the Supplier in the Certification Policy and will promptly communicate all information required by the Certification Authority, as defined in the Certification Policy. In particular, the Supplier 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. Submission

- 3.1.1. The Supplier must initiate the certification process by submitting the application for certification.
- 3.1.2. The Supplier must submit the required documentation identified in the Certification Policy.
- 3.1.3. The Supplier must execute the required legal agreements. The Supplier must formally accept the terms of this Agreement by having an authorized person sign below.
- 3.1.4. The Supplier must pay the applicable certification fees when due. Unless the Certification Authority has agreed to alternative arrangements for payment in advance, payment must be made via Invoice or by credit card, at the time of submission. **The Certification Authority will not process the Supplier's submission until payment has been received.**
- 3.1.5. The certification fee covers only one resubmission of information to the Certification Authority. A further fee may apply for additional resubmissions. Any further revision may require a new submission.

3.2. Verification

- 3.2.1. The Supplier must have engaged with one or more of the Program's Recognized Verification Entity(ies) to perform the formal verification process. The Recognized Verification Entity(ies) are denoted in the Conformance Statement.
- 3.2.2. The Supplier agrees to:
 - a. Designate a primary certification contact to coordinate with and support the Certification Authority and the Recognized Verification Entity performing the testing.
 - b. Provide the Certification Authority and Recognized Verification Entity with access to the relevant employees for the purpose of certification and verification.
 - c. Answer all additional questions reasonably related to certification that the Certification Authority or the Recognized Verification Entity may raise and to make available for inspection all documentation and other information reasonably related to conformance with the Conformance Requirements.
 - d. Comply with the Certification Authority's and the Recognized Verification Entity'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 Supplier warrants and represents that, to the best of the Supplier's knowledge, the Supplier meets the applicable Conformance Requirements at the time of certification and after achieving certification will continue to meet the Conformance Requirements throughout the lifetime of the Product's certification, in accordance with the Certification Policy.**
- 3.3.2. If the Supplier 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 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.

3.4. Maintenance of Certification

- 3.4.1. During the period of this Agreement, maintenance of the certification is required periodically at intervals defined in the Certification Policy. If the Supplier wishes its Product to remain active in the certification program, the Supplier must submit the appropriate documentation and pay the annual fee. The terms and conditions, responsibilities, timeframes, and process for maintaining the certification are defined in the Certification Policy. Failure to meet the requirements will result in the certification status being changed to inactive in the Certification Register. At that time, the Product is no longer considered certified.
- 3.4.2. The Supplier must pay the annual fee defined in the then current certification fee schedule published by The Open Group prior to the expiry date.

4. Confidentiality

The Certification Authority shall, except where a provision of this Agreement provides otherwise, not disclose and 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, 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 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.

- 4.1.** Except for disclosure to the Certification Authority for the purpose of certification, information on the Supplier's Verification and any other information about the Supplier that is obtained during the Verification process shall be held confidential by the Certification Authority and the Supplier.
- 4.2.** Information regarding the certification and Verification process, including the outcome of the Verification, 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.
- 4.3.** Prior to written notification from the Certification Authority indicating the award of certification, the Supplier shall not disclose publicly or to any third party, other than the Recognized Verification Entity and its personnel, any information regarding the certification process or verification process for the declared Scope of Certification, including progress through the process and the Recognized Verification Entity's findings recorded in the verification report.
- 4.4.** The Certification Authority may disclose the Supplier'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, the Certification Authority may disclose the Supplier's confidential information to the Supplier's contracted Recognized Verification Entity(ies) and its personnel. The Certification Authority may also disclose the Supplier'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 Supplier's confidential information with the third party. 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.
- 4.5.** 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 certification has been achieved (the "Delayed Listing Period"), the Supplier'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 Supplier may not publicly claim that it is or has been certified, use the Trademarks, or make any representation of conformance to the Program 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 Supplier that the Delayed Listing 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 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. Supplier's Obligations

If a third party asserts a claim against The Open Group, the Supplier 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 Supplier'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 Supplier, provided that the claim arises out of:

- a. Allegations that Supplier's Products bearing the Trademarks do not meet the applicable 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 Supplier or on the Supplier's behalf; and/or
- c. The Supplier'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 Supplier on the express instructions of The Open Group, and
- b. The Supplier (together with any other Suppliers 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 Supplier 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 the applicable 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 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.
- 7.2.** The Certification Authority will charge the applicable certification fee when the Supplier submits the Product for certification. Annually thereafter, the Certification Authority will charge the applicable annual fee.
- 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.

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 Supplier

The Open Group

CID: _____

Program: _____

Signed

Signed

Name

Name

Title

Title

Date

Date

Email: _____

Email: legal@opengroup.org

Address: _____

548 Market St. #54820

San Francisco, CA, 94104-5401. USA

Please complete and submit (scanned/ PDF) a signed copy of this document to the [Certification Authority](#). 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.