

# The Open Group® Product Certification Portfolio Verification Entity Recognition Agreement

Month Year, Version 1.0

This Verification Entity Recognition Agreement (“Agreement”) is entered by and between the following Parties: The Open Group, L.L.C. (“The Open Group”) and the Verification Entity described in Clause 1.11 below and more particularly described in the signature section of this Agreement.

## Background:

1. This Agreement pertains to each certification program within The Open Group Product Certification Portfolio that utilizes third-party Recognized Verification Entities. An organization may be recognized to perform Verification Services for one or more such certification programs. Each recognition is independent and requires that the organization meet the requirements of the specific certification program.
2. This Agreement applies to the certification program identified in a fully executed Verification Entity Recognition Agreement Schedule incorporated into this Agreement. Together, this Agreement and the Verification Entity Recognition Agreement Schedule embody the entire agreement between the Parties relating to the certification program identified in the Verification Entity Recognition Agreement Schedule.
3. The Open Group is the Certification Authority that manages the day-to-day operations of the certification program (“Certification Authority”), in accordance with the policies defined in the Certification Policy.
4. The Verification Entity, party to this Agreement, has submitted evidence to The Open Group that it meets the criteria defined in this Agreement to be recognized. Recognition is provided within a given certification program, for a specific version of the Body of Knowledge, and for a specific scope of recognition.
5. Suppliers applying for product certification must submit the appropriate evidence to a Recognized Verification Entity, which will determine whether conformance to the applicable Conformance Requirements is demonstrated for the declared Profile(s).
6. This Agreement enables the Recognized Verification Entity to perform Verification Services for the certification program, for the Supplier(s) with which they contract, and which is not party to this Agreement, but which is separately party to a Certification Agreement with the Certification Authority (“Purpose.”).

## The Parties agree as follows:

1. Definitions. As used in this Agreement, the terms “Agreement”, “The Open Group”, “Certification Authority”, and “Purpose” will have the meanings indicated above. Additional defined terms are as follows:

- 1.1. Body of Knowledge. The collection of normative documents from which the Conformance Requirements are derived.
  - 1.2. 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 certification program.
  - 1.3. Certification Policy. The document that defines the policies that govern the operation of the certification program, as modified by The Open Group from time to time. The Certification Policy is publicly available on the Certification Authority's website.
  - 1.4. Confidential Information. Confidential or proprietary information relating to the Purpose of this Agreement including that of the Supplier not party to this Agreement for which the disclosing party is authorized to share with the receiving party, and, in such case, the receiving party is bound to keep confidential.
  - 1.5. Conformance Requirements. The rules (shall, must) and recommendations (should, may) described in the Body of Knowledge that convey the criteria to be fulfilled by a Product.
  - 1.6. Product. A Supplier's commercial offering that implements the applicable Conformance Requirements.
  - 1.7. Profile. A documented and logical set of Conformance Requirements that defines the capabilities a Product must support in order to be certified.
  - 1.8. Recognized Verification Entity. The entity that has met the criteria for a Recognized Verification Entity, has entered into this Verification Entity Recognition Agreement with the Certification Authority, and is authorized by the Certification Authority to perform Verification for the certification program.
  - 1.9. Schedule. The document containing the supplemental details that is mutually executed (either signed or through The Open Group online certification system) and incorporated into this Agreement. Together with this Agreement, it embodies the entire agreement between the Parties relating to its subject matter.
  - 1.10. Supplier. An organization who is either applying for certification in or has certified a Product in the program.
  - 1.11. Verification Entity. Party to this agreement, the entity that is applying to be recognized to perform Verification Services for the certification program.
  - 1.12. Verification Procedures. Documented steps to verify conformance.
  - 1.13. Verification Report. A document provided by the Recognized Verification Entity that details which Profile(s) were verified and the results.
  - 1.14. Verification Services. The testing and/or assessment services provided by the Recognized Verification Entity, in accordance with this Verification Entity Recognition Agreement, to a Supplier applying to achieve a product certification within the certification program.
2. Recognition and License. In consideration of the payments to be made in accordance with Clause 3.3 (Fees), and subject to Section 3 (Recognized Verification Entity Obligations) and the execution of The Open Group Product Certification Portfolio Verification Entity Trademark License Agreement, The Open Group hereby grants recognition status unto Verification Entity.

At all times during which Recognized Verification Entity status is in place under this Agreement, The Open Group shall include the Recognized Verification Entity in its list of Recognized Verification Entities for the certification program maintained on the Certification Authority's website.

### 3. Recognized Verification Entity Obligations.

#### 3.1. Eligibility. Recognized Verification Entity warrants that:

- 3.1.1. In performing Verification Services, it will continue to meet the requirements indicated in The Open Group Product Certification Portfolio: Verification Entity Requirements document as well as the program-specific requirements for the certification program in which it is recognized.
- 3.1.2. It will perform Verification Services in accordance with the Verification Procedures for the certification program and in accordance with Sub-clause 3.4, Scope of Recognition within the scope for which it is recognized.

#### 3.2. Conflict of Interest. In order to be able to conduct Verification Services free of any conflicting interests that might affect its conclusions, the Recognized Verification Entity shall have a written policy that:

- 3.2.1. Maintains separation between personnel performing Verification Services and any personnel performing consulting for the same organization for Product development; and
- 3.2.2. Ensures the Recognized Verification Entity is independent of any ownership, leadership, or joint business endeavor with the Supplier of the Product they are verifying.

#### 3.3. Fees. Recognized Verification Entity will pay the required Recognized Verification Entity fees for each certification program for which it is recognized, as set by The Open Group, such as for registration, training, modifications, and re-qualification, as provided on the applicable web-based fee schedule on the Certification Authority's website, and is subject to the following:

- 3.3.1. The fees are quoted net of all applicable taxes and duties that, where appropriate, will be payable in addition by the Recognized Verification Entity to The Open Group or to the relevant tax authorities as applicable.
- 3.3.2. The Open Group will charge the applicable Recognized Verification Entity fee during registration and annually thereafter.
- 3.3.3. Fees are payable in U.S. dollars.
- 3.3.4. Fees are non-refundable.

#### 3.4. Scope of Recognition. Recognition is provided to the Recognized Verification Entity to perform Verification Services for specific Profiles in a given version of the Body of Knowledge within the certification program. The Verification Entity may ONLY perform Verification Services for the versions of the Body of Knowledge and associated Profiles for which it has been recognized.

#### 3.5. Modifications to the Scope of Recognition. A Recognized Verification Entity that wants to change the scope of Profiles for which it is recognized will need to submit appropriate evidence for the change(s) to its scope for review and approval by the Certification Authority. The Recognized Verification Entity may not perform Verification Services for the changed scope until approved to do so by the Certification Authority.

#### 3.6. Modifications to Verification Procedures. From time to time, the Verification Procedures for a particular Profile may be updated. If the Recognized Verification Entity has been recognized for such Profile, it must provide evidence to the Certification Authority that it can meet these modified Verification Procedures and must do so within the timeframe specified by the Certification Authority. During this timeframe, the Recognized Verification Entity may continue to use the previous Verification Procedures. If the Recognized Verification Entity does not meet

the requirements within the timeframe specific, the affected Profiles will be removed from the recognized scope.

- 3.7. Modifications to the Body of Knowledge. From time to time, the Body of Knowledge may be updated. If the Recognized Verification Entity wishes to be recognized for the revised Body of Knowledge, it would need to apply for recognition for the new version.
- 3.8. Administrative Changes. If a Recognized Verification Entity wants to make changes that do not have a material effect on its recognition, then the Recognized Verification Entity must notify the Certification Authority within 30 calendar days of the change occurring. The Certification Authority will make the necessary updates to reflect the change.
- 3.9. Re-qualification. Recognized Verification Entity agrees to re-qualification of their company as a Recognized Verification Entity every three (3) years. The Certification Authority will perform a re-evaluation of the Recognized Verification Entity and may require evidence of continued conformance with the recognition criteria.
- 3.10. Verification Services. Recognized Verification Entity will use agreements of its choice with Suppliers and shall be free to establish its own terms and conditions for verification, including with regard to pricing, priorities, indemnities, etc., provided that such terms and conditions are not inconsistent with Recognized Verification Entity's obligations to The Open Group under this Agreement. The Recognized Verification Entity's agreements with Suppliers must explicitly:
  - 3.10.1. Prevent, prior to written notification from the Certification Authority indicating the award of certification, both parties from disclosing publicly or to any third party, other than the Certification Authority, any information regarding the certification or verification process for the Product that is being certified and its declared Profile(s), including progress through the verification process and the Verification Report.
  - 3.10.2. Convey that certification is granted only by The Open Group, as the Certification Authority, and that all verifications including successful verifications ARE NOT equivalent to certification by the Certification Authority.
- 3.11. Verification Report. Upon completion of the verification process, the Recognized Verification Entity will promptly communicate the Verification Report to the Supplier and the Certification Authority. Under no circumstances shall a Recognized Verification Entity or its personnel communicate or disclose to any other third party any results of the verification. All records (e.g., documents submitted by the Supplier) and verification documentation shall be maintained and made available to the Certification Authority upon request, for at least six (6) years from the date the documents are submitted to the Certification Authority or the maximum period permitted by local law if less than 6 years subject to approval of The Open Group which it shall not unreasonably withhold, provided that all such records shall be deemed to be Confidential Information as defined in Section 4 (Confidential Information) below.
- 3.12. Oversight by the Certification Authority. The Recognized Verification Entity must submit their Verification Report to the Certification Authority in accordance with the Certification Policy.

If the Certification Authority believes the Recognized Verification Entity's findings, as recorded in the Verification Report, are insufficient then, in the interest of maintaining the quality and integrity of the program, the Certification Authority may require the Recognized Verification Entity to provide clarification or additional rationale to support their findings.

If the Certification Authority believes that any person from the Recognized Verification Entity is not following the Verification Procedures correctly or otherwise not performing their verification responsibilities adequately, the Certification Authority has the right to require

retraining of such person and/or removal of the Recognized Verification Entity from the Recognized Verification Entity register.

- 3.13. Audit by the Certification Authority. The Recognized Verification Entity recognizes that compliance to the Recognized Verification Entity criteria defined in this document is of utmost importance to The Open Group in maintaining the quality and integrity of the certification program. The Recognized Verification Entity agrees that the Certification Authority may conduct random audits of its Verification Services, either by asking for information directly, in which case the Recognized Verification Entity shall cooperate and provide such information, or by obtaining information provided by a 3<sup>rd</sup> party or other means to the Certification Authority or its agents.

#### 4. Confidential Information.

- 4.1. Notwithstanding Clauses 4.2 through 4.7 below, the Certification Authority and the Recognized Verification Entity and its employees and/or contractors will hold confidential:

4.1.1. During the certification process, prior to the award of certification, all information relating to a Supplier and its Product.

4.1.2. The Recognized Verification Entity's findings, including the Verification Report and any documents submitted by the Supplier.

4.1.3. Any information regarding unsuccessful attempts for verification and/or certification.

Information regarding the details of the verification process shall not be disclosed publicly, or to any third party other than the Supplier, by or by any party acting on behalf of the Certification Authority, the Recognized Verification Entity or its employees and/or contractors.

- 4.2. Either party may make available to the other its Confidential Information. As used in this Agreement, the term "Confidential Information" shall include only that information furnished, disclosed, or transmitted to one party by the other party, whether disclosed orally or in writing, which is identified by the disclosing party as being confidential or proprietary. Information first disclosed orally must be described in a letter or memorandum sent to the receiving party within twenty (20) days of such disclosure, identifying such Information as confidential and reciting the date and place of oral disclosure. Pending receipt of such letter or memorandum, the receiving party shall maintain the Confidential Information as confidential under this Agreement. However, the term "Confidential Information" shall not include any information which:

4.2.1. Is contained in a printed publication prior to the date of this Agreement.

4.2.2. Is or becomes publicly known through no wrongful act or failure to act on the part of the receiving party.

4.2.3. Is known by the receiving party without obligations of confidentiality at the time of disclosure by the disclosing party or becomes rightfully received by the receiving party from a third party without obligations of confidentiality.

4.2.4. Is required to be disclosed by any applicable law or by order of any Court of competent jurisdiction or any government body, agency or regulatory body, to the extent of the required disclosure.

- 4.3. Each party agrees to receive all Confidential Information in confidence and to maintain such Confidential Information using the same degree of care used by it to protect its own confidential information of like importance, but in no event less than a reasonable degree of care.

- 4.4. Each party further agrees to disclose the Confidential Information only to its employees or contractors whose services are required in furtherance of the Purpose of this Agreement, and

to require each of its employees and/or contractors to comply with the terms of this Agreement prior to the disclosure of such Confidential Information to them.

- 4.5. Limitation of Use. Each party shall use such Confidential Information only in connection with the furtherance of the certification program and shall make no further use, in whole or in part, of any such Confidential Information. Nothing in this Agreement, however, shall restrict the disclosing party from using, disclosing, or disseminating such Confidential Information in any way.
- 4.6. Disclaimer. No rights or obligations other than those expressly recited herein are implied by this Agreement. In particular, no license is hereby granted directly or indirectly to the receiving party under any patent, copyright, trade secret or any other intellectual property right now held by, or which may be obtained by, or which is or may be licensable by the disclosing party. Further, with respect to any information regarding plans for future offerings of the disclosing party disclosed pursuant to this Agreement, the receiving party understands and agrees that such plans are subject to change without notice at any time and that the disclosing party shall have no obligation to execute such plans and should have no liability as a result of any change to such plans.
- 4.7. The obligations of each party and its employees and/or contractors under this Agreement shall expire six (6) years from the date the last item of such information is divulged to the other party hereunder, unless terminated earlier by prior written agreement of the parties.
5. Public Statements. Subject to Certification Authority's prior written approval, the Recognized Verification Entity may publicly announce that it is a Recognized Verification Entity for the certification program. Unless otherwise authorized by Certification Authority in writing, Recognized Verification Entity shall not make any other public statements regarding this Agreement or its terms.
6. Assignment and Subcontracting. This Agreement may not be assigned by Recognized Verification Entity, nor shall Recognized Verification Entity subcontract any Verification Services to any third party, without Certification Authority's prior written consent, which consent may be withheld for any or no reason. The Open Group may terminate this Agreement immediately without notice in the event of any attempted assignment or subcontract in violation of this Clause.
7. Withdrawal of Status. Independent of its rights to termination of this Agreement as provided below, The Open Group reserves the right, by written notice, to suspend or withdraw Recognized Verification Entity's recognition status under this Agreement if at any time The Open Group reasonably believes that Recognized Verification Entity is not in material compliance with the terms of this Agreement. In such event, The Open Group shall provide the reason(s) for such suspension or withdrawal in such notice in reasonable detail. If The Open Group believes in its sole discretion that such reasons may be cured without jeopardizing the integrity of the certification program, it shall provide the Recognized Verification Entity with a reasonable opportunity to take such steps as The Open Group may specify to restore Recognized Verification Entity's recognition status under this Agreement.
8. Actions Following Suspension or Withdrawal. Recognized Verification Entity acknowledges that maintaining the integrity of the certification program is of great importance to The Open Group, and therefore agrees that it shall not enter into contracts for Verification Services for certification engagements nor perform Verification Services for certification engagements from and after the date that it receives notice from The Open Group that its recognition status under this Agreement has been withdrawn or suspended until such time, if ever, as such recognition has been restored by The Open Group in its sole discretion.
9. Non-exclusivity of Relationship. Recognized Verification Entity acknowledges that The Open Group intends to enter into agreements similar to this Agreement with other verification entities and that

such other entities may also be listed as Recognized Verification Entities by The Open Group on the Certification Authority's website.

10. Independent Contractor Relationship. This Agreement establishes the terms upon which Recognized Verification Entity will act as an independent contractor to Suppliers, but does not establish any partnership, fiduciary, employment or other relationship between The Open Group or any other Supplier and Recognized Verification Entity.

11. Indemnity.

11.1. Recognized Verification Entity shall indemnify and hold The Open Group harmless in respect of any and all loss or damage to property, personal injury, or death and expenses (including legal costs) suffered by The Open Group, Recognized Verification Entity or any third party in consequence of any negligent act or omission or breach of statutory duty on the part of Recognized Verification Entity or any person engaged by them in any way arising out of or connected with the performance of this Agreement.

11.2. The Open Group shall indemnify and hold Recognized Verification Entity harmless in respect of any and all loss or damage to property, personal injury, or death and expenses (including legal costs) suffered by The Open Group, Recognized Verification Entity or any third party in consequence of any negligent act or omission or breach of statutory duty on the part of The Open Group or any person engaged by The Open Group (other than the Recognized Verification Entity) in any way arising out of or connected with the performance of this Agreement.

11.3. Notwithstanding Clauses 11.1 and 11.2 above The Open Group's liability under or in relation to this Agreement and its obligation to indemnify the Recognized Verification Entity hereunder shall be limited, whether in contract, tort or otherwise, to the amount received by The Open Group from the Recognized Verification Entity in respect to the recognition. In any event neither party shall be liable to the other party or be required to indemnify the other party for any indirect or consequential losses (including, without limitation, any loss of contracts, production, profits or use).

11.4. Nothing in this Agreement shall be interpreted as placing any limitation upon either party's liability at law for death or personal injury.

12. Term and Termination

12.1. This Agreement will commence and be effective on the date of the last signature by the parties and the initial term of this Agreement shall continue for a period of three (3) years, and shall be extended, subject to successful re-qualification for successive three-year periods (the "Term").

12.2. This Agreement may be terminated at any time upon six (6) months' written notice by either party to the other; or 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 and such a breach has not been rectified to the satisfaction of the other party.

12.3. If either party (i) commits a breach of this Agreement or fails to discharge any of the obligations under this Agreement, and in the case of a breach capable of remedy fails to do so within thirty (30) days of receiving notice of such breach from the other party, or (ii) becomes bankrupt or goes into liquidation, or (iii) if a receiver is appointed in respect of the whole or any part of its assets, or (iv) if it makes an assignment for the benefit of or enters into a composition with its creditors generally or threatens to do any of the things specified in (ii), or (v) any judgement is made against it and remains unsatisfied for seven days, the other party shall be entitled to terminate this Agreement forthwith on written notice without prejudice to any rights that party may have in respect of such breach or failure.

- 12.4. Expiration or termination of this Agreement for whatever reason shall cause The Open Group to remove Recognized Verification Entity from the Certification Authority's website register and Recognized Verification Entity, at its expense, shall immediately cease to make any use of the Trademarks and shall not make any claims of being a Recognized Verification Entity, whatsoever.
- 12.5. 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 six (6) years following such termination.
- 12.6. In the event of termination pursuant to this Section 12:
- 12.6.1. Where a six-month termination notice has been advised by either party, Recognized Verification Entity shall not enter into new Verification Services contracts with Suppliers that it cannot foreseeably complete before the effective date of termination; or,
- 12.6.2. Where immediate termination for reasons pursuant to Clause 12.3 above, the Recognized Verification Entity may complete any incomplete Verification Services commitments, subject to the written request of the Supplier to The Open Group, which it shall not unreasonably deny.
13. 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 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.
14. General.
- 14.1. 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 understanding and agreement between the parties as to the subject matter hereof and supersedes, cancels and merges all prior agreements, negotiations, commitments, writing and discussions between the parties as to the subject matter hereof. Neither of the parties shall be bound by any condition or representation with respect to such subject matter, other than as expressly provided in this Agreement, or as duly set forth in writing signed by a duly authorized representative of each party on or subsequent to the date of this Agreement.
- 14.2. This Agreement may not be modified, changed or discharged, in whole or in part, except by prior written agreement of the parties.
- 14.3. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of the remaining provisions of the Agreement.
- 14.4. No delay or omission by either party in exercising any right under this Agreement will operate as a waiver of that or any other right. A waiver or consent given by either party on any one occasion is effective only in that instance and will not be construed as a bar to or waiver of any right on any other occasion.
- 14.5. 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.

THIS SPACE INTENTIONALLY LEFT BLANK



Execution

By signing below, the Verification Entity agrees to be bound by this Verification Entity Recognition Agreement and the Certification Policy.

AGREED by the parties through their authorized signatories:

FOR AND ON BEHALF OF

\_\_\_\_\_  
Verification Entity

FOR AND ON BEHALF OF

The Open Group, L.L.C.

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

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

Email: legal@opengroup.org

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

548 Market St., #58420

\_\_\_\_\_  
\_\_\_\_\_

San Francisco, CA 94104-5401, U.S.A.

\_\_\_\_\_  
Please submit 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.