

# Active Loss Prevention - Participation Agreement

Date:

Participant Name:

Participant Address:

City:

Postal/Zip Code:

Country:

## ACTIVE LOSS PREVENTION - PARTICIPATION AGREEMENT

This Agreement is effective this \_\_\_\_ day of \_\_\_\_\_ by and between \_\_\_\_\_ ("Participant") having an office at \_\_\_\_\_

and The Open Group L.L.C., having an office at 44, Montgomery Street, San Francisco, CA 94104-4704, USA ("The Open Group").

WHEREAS, Participant desires to provide support for The Open Group's Active Loss Prevention Initiative ("the Initiative"), the primary purpose of which is to address challenges relating to the proactive management of the full spectrum of information and eBusiness risks, backed by internationally accepted procedures and standards; and

WHEREAS, The Open Group desires Participant to participate in the Initiative,

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, Participant and The Open Group agree as follows:

### 1. Term of Agreement

The initial term of this Agreement shall be for a one year period from the date of last signature of this Agreement by the parties or the conclusion of the selected project, whichever occurs first, renewing automatically thereafter for further periods of 12 months unless terminated by either party in accordance with Section 6 below.

## 2. Participation Levels and Fees

Participant agrees to join the Initiative as:

Participant \_\_\_\_\_

Project Sponsor \_\_\_\_\_

Initiative Sponsor \_\_\_\_\_.

Participant benefits and fees, based on indicated level of participation, are detailed in Schedule 1 hereto.

## 3. Use of Name

Nothing contained in this Agreement shall be construed as conferring any right to use in advertising, publicity, or other promotional activities any name, trade name, trademark, or other designation of either party hereto (including contraction, abbreviation or simulation of any of the foregoing) except that each party may refer to the other in a press release relating to this Participation Agreement, the content of such release to be mutually agreed.

## 4. Confidentiality

Each party agrees to be bound by the terms of The Open Group standard non-disclosure agreement, attached as Schedule 2 hereto.

## 5. Intellectual Property

5.1 Participant may create work (including without limitation materials in electronic form, data, graphics, HTML or other code in electronic form or in master printed copies) specifically supplied to The Open Group for use by The Open Group or the Initiative, in connection with items sponsored by the Participant for publication by The Open Group ("Sponsored Publication Material").

5.2 Participant undertakes with The Open Group that all Sponsored Publication Material is original work of the Participant, its employees or agents and Participant shall procure, by way of present and future assignment, the assignment of the copyright in all Sponsored Publication Material delivered to The Open Group which is accepted by The Open Group as ready for publication. Such assignment shall be: a) for all territories of the world, b) for all periods of copyright (including any extensions), c) for all manner of reproduction, adaptation, translation and presentation; and d) in consideration of US \$ 1 payable to the Participant on demand.

Notwithstanding the foregoing, no rights are hereby transferred to The Open Group or any third party in any copyright or other intellectual property rights owned by Member in original works from which Sponsored Publication Material is derived.

5.3 The Open Group grants to the Participant a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to: a) reproduce the Sponsored Publication Material in electronic or printed form for all internal purposes within the Participant's organisation; and b) in limited extracts or summaries to clients or direct contacts of the Participant provided such reproduction does not comprise part of any service charged for (other than for the provision of client-specific legal advice).

5.4 To the extent permitted by law, Participant waives and shall procure the waiver of all author's moral rights in respect of the Sponsored Publication Material and publications of The Open Group that comprise substantial portions of the Participant's work or materials, provided always that, for so long as Participant continues as a subscriber to The Open Group, The Open Group shall acknowledge in each sponsored publication in whatever form, the authorship of the Participant, in no lesser prominence than for The Open Group's own notice or that of any other contributing sponsor at similar level of contribution.

## 6. Indemnification

Each party agrees to defend, indemnify and hold the other party harmless from and against any and all liability, losses, expenses, attorneys' fees, or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the indemnifying party, its officers, agents, or employees.

Notwithstanding the foregoing, and except for bodily injury or death to any person, the parties' liability for any and all damages under this Agreement, shall be limited to an amount equal to the total net payments payable by Participant during the twelve (12) months preceding the month in which the damage occurred. Neither party shall be liable for damages resulting from loss of data, loss of anticipated profits or any special, indirect, incidental or consequential damages. Except as provided above, EACH PARTY IS PROVIDING THE SERVICES HEREUNDER ON AN 'AS IS' BASIS WITH NO WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## 7. Termination

This Agreement may be terminated:

- a) By either party giving to the other sixty (60) days notice in writing before any anniversary of the date hereof.
  
- b) By The Open Group on written notice to the Participant if the Participant has committed any material breach of this Agreement and in the case of a breach capable of being remedied, has failed to remedy the breach, within

30 days after the receipt of a written request in writing from The Open Group notifying the Participant of such breach.

- c) By The Open Group on written notice to the Participant if the Participant fails to pay any sum(s) due to The Open Group under this Agreement and such sum(s) remain unpaid for sixty (60) days after written notice from The Open Group that such sum(s) have not been paid.
- d) By participant on written notice to The Open Group if The Open Group has committed any material breach of this Agreement and has failed to remedy the breach within 30 days after receipt of a written request in writing from the participant notifying The Open Group of such breach.
- e) For the avoidance of doubt, termination of this Agreement for any reason shall not entitle the Participant to any refund of the annual sum due under this Agreement.

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

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

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

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

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

## **ATTACHMENT 1 – PARTICIPATION LEVELS AND FEES**

### **Initiative Sponsor** (Fee: US\$50,000/annum)

Benefits:

- Web links on Active Loss Prevention home page
- Acknowledged on all literature front covers as an Initiative Sponsor
- Acknowledged at conferences as an Initiative Sponsor
- Receipt of paper copies of all work package output (and CD)
- Right to distribute output internally within organization
- Right to distribute output to customers
- Seat on Steering Board and vote on agenda & plan
- Internal Presentations: 1 x Board level, 1 x Workshop style on expenses only basis

### **Project sponsor** (Fee varies per project – approximately US\$15,000) - **Specific to one project.**

This fee is in addition to the Participant fee for the selected project.

Benefits:

- Links on work package web pages
- Acknowledged as a Project Sponsor on all literature for that work package
- Acknowledged as a Project Sponsor at work group meetings (including teleconferences)
- Receipt of paper copies of work package output (and CD)
- Right to distribute such output internally within organization
- Right to distribute output to customers
- Seat on Project Review Board/Steering Group and vote on brief and results
- Internal Presentation: 1 x Workshop style on expenses only basis

Specify Project: \_\_\_\_\_

### **Participant** (Fee: US\$7,500) – specific to one project.

This fee shall cover participation in the chosen project for the period of 12 months or the conclusion of the project, whichever occurs first.

Benefits:

- Access to all work of the Initiative
- Networking
- Paper copies of deliverables
- CD copies
- Additional fee for more copies

Specify Project: \_\_\_\_\_

## **ATTACHMENT 2 – NON-DISCLOSURE AGREEMENT**

The purpose of this agreement is to set out the terms on which participants in Open Group Active Loss Prevention meetings should treat any information disclosed at such meetings (“Information”):

You shall keep confidential all Information and all matters discussed during the meeting and which are contained in any related materials (written or electronic). You shall not disclose any of the same to any third party, nor reproduce or transmit or store in any retrieval system any Information in any form or by any means whatsoever except for the purposes of furthering the work of the Active Loss Prevention Initiative.

Exceptions to the above include: disclosure to individuals within your organisation for internal purposes only, Information which was in the public domain at the time of the disclosure, or information which, though originally Information, becomes part of the public knowledge through no fault of yours.

Yours signature to the Active Loss Prevention Participation Agreement to which this is attached signifies acceptance of terms and conditions of this agreement.

### **ATTACHMENT 3**

#### **Designated representative(s) (Please print)**

|                    | Primary Representative | Alternate Representative |
|--------------------|------------------------|--------------------------|
| Name:              |                        |                          |
| Title:             |                        |                          |
| Organization Name: |                        |                          |
| Address            |                        |                          |
| Phone No:          |                        |                          |
| Fax No:            |                        |                          |
| Mobile Phone No:   |                        |                          |
| eMail Address:     |                        |                          |

#### **Billing Address (Please Print)**

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*Contact Name:*

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*Title:*

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*Organization Name:*

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*Address:*

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*Mail Stop:*

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*City:* *State/Province:* *Zip:*

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*Country:* *Telephone:*

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*Fax:* *Email:*

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