

TOGAF® 9 Tool Certification Agreement

Version 1.01, February, 2012

Note

PLEASE READ THE FOLLOWING TERMS AND CONDITIONS BELOW. ACCEPTING THESE TERMS IS THE FIRST STAGE TO BECOMING CERTIFIED. IF YOU ACCEPT ALL OF THE TERMS CONTAINED IN THIS AGREEMENT, YOU SHOULD INDICATE THIS BY SIGNING THE AGREEMENT AT THE BOTTOM AND SENDING IT BACK BY FAX. UPON ACCEPTANCE AND COUNTERSIGNATURE BY THE OPEN GROUP, THE FULLY EXECUTED COPY OF THIS AGREEMENT WILL BE SENT TO YOU.

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

WHEREAS:

1. The Supplier wishes to submit a product for certification in the TOGAF® Certification program ("the Certification Program") against the TOGAF® 9 Tool Certification Conformance Requirements
2. The product, is uniquely defined in the Registration Form; and,
3. The Open Group is the Certification Authority ("CA") 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:

Applicant	A Supplier who is in the process of having a product certified.
Certificate	A document issued to a Supplier formally declaring that a product has successfully met the requirements for certification and thus is considered a Certified Product.
Certification Agreement	The agreement between the Applicant and the Certification Authority that defines the certification service to be provided and contains the legal commitment by the Applicant to the conditions of the certification program.
Certification Authority (CA)	The organization that manages the day-to-day operations of the certification program in accordance with the policies defined in this document. The Open Group acts as the Certification Authority for TOGAF® 9 Tool certification.
Certification Program Guide	The document that describes the processes for how a Supplier achieves certification for a product. The guide is used in conjunction with this policy document. The guide provides detailed instructions on the steps a Supplier must take to get a product certified and where to obtain relevant information and documents.
Certification Policy	The "Architecture Tool Certification Policy" document, as amended from time to time by The Open Group, and available at http://www.opengroup.org/togaf9/cert/ .
Certification Register	The official list of all Certified Products, which is maintained by the Certification Authority and made available via the Internet.
Certification System Deficiency (CSD)	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.

Certification Mark	The Open Group's applicable certification mark as designated from time to time by The Open Group.
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 for which such certification is still in force.
Conformance Requirements	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 the TOGAF® Tool Certification Conformance Requirements document which is available on the certification program web site at http://www.opengroup.org/togaf9/cert
Conformance Statement	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. The questionnaire that the supplier completes is known as a Conformance Statement Questionnaire (CSQ).
Interpretation (INT)	Decision made by the Specification Authority 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.
Person	Includes a body of persons whether or not incorporated.
Problem Report (PR)	A question of clarification, intent, or correctness of a specification, or the web-based Certification System, which, if accepted by the Specification Authority, will be resolved into an Interpretation or Certification System Deficiency, respectively.
Product Standard	The document in which Conformance Requirements are specified for a particular type of product, and against which products may be certified in the program. There will be one Product Standard for each type of product to be certified.
Registration Form	A web 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.
Specification Authority (SA)	The Open Group Architecture Forum, which is responsible for developing, maintaining, and interpreting the specification(s).
Supplier	A product vendor who is interested in, applying for certification in, or has certified a product in the TOGAF® 9 Tool certification program. During the period in which a Supplier is going through the certification process to get a product certified, the Supplier may be referred to as an Applicant.
The Mark	The Open Group TOGAF® 9 Tool Certification Mark which consists of The Open Group Certification Mark and the word "Certified", used in association with the term "TOGAF® <xx> TOOL ", where <xx> is a number denoting the applicable version of the TOGAF® Specification(s).

2. The Certification Authority's Obligations

2.1. Certification

The CA will audit all certification-related information provided by the Supplier including the CSQ. The CA will check to make sure the submitted information demonstrates that the product meets the applicable Conformance Requirements.

The CA 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 CA 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 CA 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 CA 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 CA 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 CA 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 signing and returning this Agreement and must authorize payment of the initial and subsequent certification fees when due, according to the fee schedule published on the program web site at www.opengroup.org/togaf9/cert.

Payment is required to complete a full submission for registration. Payment may be either by credit card at the time of registration, or, subject to the agreement of the CA, by check or wire transfer received by the CA in advance of registration. The CA will not process the registration until payment has been received.

3.2. Certification

The Supplier agrees to provide all required supporting evidence to the CA, 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 CA'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 web-based 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 CA 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 CA shall, except where a provision of this Agreement provides otherwise, maintain in confidence all information the Supplier discloses to the CA in relation to this certification. No license, express or implied, under any trademark or copyright is granted by the Supplier to the CA by virtue of such disclosure and the CA shall not use any such information except for the purposes of this Agreement. The CA'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 CA may disclose the Supplier confidential information to those of its employees who reasonably require to have access to such information. However, the CA may not disclose the Supplier 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 CA 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 months from the date of written notice by the CA 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 TOGAF® Specification(s) without first informing the CA 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.

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 CA together with its officers, servants, agents, subcontractors, and shareholders of the CA and their servants when engaged in activities on behalf of the CA 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 TOGAF® 9 Tool Certification, or the Supplier's manufacture, use, or supply of the Products related to TOGAF® 9 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 CA 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.

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 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 CA is the address set out above, and the specified address for the Supplier is the address provided in Clause 10 "Execution" below. 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.

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 at the date of acceptance by The Open Group and will expire only if explicitly terminated:

- a. At any time upon six months' written notice by either Party to the other; or
- b. 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. Likewise, 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 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/togaf9/cert/> are quoted net of all applicable taxes and duties which, where appropriate, will be payable by the Supplier to the CA (or to the relevant tax authorities as applicable) in addition.

Payment

The CA will charge the applicable certification fee upon submission of a completed application, and subsequently according to the schedule at <http://www.opengroup.org/togaf9/cert/>

The supplier 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 CA in the web-based certification system or by other arrangement with the CA (check or wire transfer). Fees are non-refundable.

8. Right to Use The Open Group TOGAF® 9 Tool Certification Mark

8.1. The TOGAF® 9 Tool Certification Mark shown in Clause 9 is a 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 Mark are inserted to enable The Open Group to preserve The Mark for the benefit of the IT community.

8.2. The Supplier, its agents and its product distributors, may use the term "TOGAF® <xx> TOOL " in conjunction with The Mark only on or in relation to a product that appears in the Certification register. The 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 the Internet
- on training manuals and other materials
- on marketing collateral

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

8.4. Where The Mark appears on the Internet it must be hyperlinked to the **TOGAF®** Certification web page <http://www.opengroup.org/togaf9/cert/>,

8.5 All use of The 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 Mark must not be used in such a way as to suggest that all the products being advertised are certified.

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

The 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, overhead projector slides and presentation materials, computer video screens, and the Internet.

Methods of distinguishing a textual trademark include printing it in CAPITALS, *italicized text*, **bold-faced text**, Initial Capital Letters, or placing the trademark in "quotation marks".

The Mark must stand alone and be surrounded by a generous amount of space. It must not be enclosed within a contrived shape or used as part of another symbol or name. The Mark image files include the surrounding space required when The Mark is displayed on computer video screens or the Internet. The Mark artwork specification defines the surrounding space required in other cases.

8.7. The graphical design of The Mark must be strictly adhered to.

Where The Mark is displayed on a computer screen or the Internet, an image file of The Mark or an alternative provided by The Open Group, must be used. It must not be re-sized or altered in any way. The Open Group may be able to supply alternative image files in other sizes if requested. Copying of The Mark image files for this purpose is permitted.

In all other cases where The Mark is displayed, The Mark artwork specification must be followed.

8.8. The Mark must never be superimposed on or used in association with other graphics or logos.

8.9. The Mark may not be used in conjunction with product names under any circumstances.

8.10. The first or most significant occurrence of The 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.

8.11. 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 TOGAF® 9 Tool Certification Mark is a trademark of The Open Group."

8.12. The Open Group reserves the right to change its trademarks at any time at its discretion. When The Open Group changes The Mark, 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.

9. The Open Group TOGAF® 9 Tool Certification Mark

The Open Group TOGAF® 9 Tool Certification Mark is as follows, without the watermark "SAMPLE":



10. Execution

By signature of their authorized representatives the Parties herein execute this agreement, and accept and agree to abide by these terms and conditions.

FOR AND ON BEHALF OF

FOR AND ON BEHALF OF

The Supplier

The Open Group

Signed

Signed

Name

Name

Title

Title

Date

Date

Facsimile Number: _____

Address: _____

Email: _____

FOR LEGIBILITY, COMPLETE THIS DOCUMENT USING TYPED OR PRINTED BLOCK CAPITAL LETTERS. PLEASE SEND THE SIGNED AGREEMENT TO: **FAX +1 415 276 3760**, OR **EMAIL togaf-cert-admin@opengroup.org**. UPON ACCEPTANCE AND COUNTERSIGNATURE BY THE OPEN GROUP, THE FULLY EXECUTED COPY OF THIS AGREEMENT WILL BE SENT TO YOUR ABOVE INDICATED EMAIL ADDRESS.

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