



Contribution and License Agreement

Last Updated: November 10, 2015

This Contribution and License Agreement (this "Agreement") is entered into by and between the Anti-Malware Testing Standards Organization, Inc., a California nonprofit mutual benefit corporation ("AMTSO") and the other party which either executes a counterpart signature page to this Agreement or clicks through the "I accept" button online ("Adopter").

Recitals

Whereas, Contributor (as defined below) has participated in the development of specifications or standards, best practices, educational or awareness materials, tools or other resources to aid standards-based testing methodologies or other related materials, each regarding anti-malware and related products;

Whereas, Contributor wishes to enter into this Agreement pursuant to which it will give certain licenses to Adopter; and

Whereas, Adopter wishes to enter into this Agreement pursuant to which it will receive such licenses.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and conditions contained herein, AMTSO and Adopter agree as follows:

Agreement

1. DEFINITIONS

- a. "Adopter" means the Adopter and any other parties which have executed a license agreement with AMTSO in the same form as this Agreement or any subsequent revision hereof.
- b. "Affiliate" means any entity that is directly or indirectly controlled by, under common control with or that controls the subject party. For purposes hereof, control means direct or indirect ownership of or the right to exercise (i) greater than fifty percent (50%) of the outstanding shares or securities entitled to vote for the election of directors or similar managing authority of the subject entity or (ii) greater than fifty percent (50%) of the ownership interest representing the right to make the decisions for the subject entity.
- c. "Contributor" means each person or entity (or any of its personnel) which made any contribution to or otherwise participated in the development of any Final Specification and which has executed a license agreement with AMTSO in the same form as this Agreement or any revision hereof. Each Contributor is also an Adopter.

d. "Final Specification" means any (i) specifications or standards, (ii) best practices, educational or awareness documents or other materials, (iii) tools or other resources to aid standards-based testing methodologies or (iv) other related materials, each regarding anti-malware and related products, published by AMTSO and described as a Final Specification.

e. "Licensed Claims" are those claims of a patent or patent application, throughout the world, excluding design patents and design registrations, owned, controlled or which can be sublicensed in compliance with the requirements of this Agreement by a party or its Affiliates now or at any future time and which would necessarily be infringed by implementing the Final Specifications as permitted by this Agreement. A claim is necessarily infringed hereunder only when it is not possible to avoid infringing it because there is no plausible non-infringing alternative for implementing the required portions of the Final Specifications as permitted by this Agreement. Notwithstanding the foregoing, Licensed Claims shall not include any claims other than as set forth above even if contained in the same patent as Licensed Claims; or that read solely on any implementations of any portion of the Final Specifications that are not required by the Final Specifications. Moreover, Licensed Claims shall not include: (i) any enabling technologies that may be necessary to make or use any Licensed Product but are not themselves expressly set forth in the Final Specifications (e.g., compiler technology, object oriented technology, basic operating system technology, and the like); (ii) the implementation of other published standards developed elsewhere and merely referred to in the body of the Final Specifications; or (iii) any Licensed Product and any combinations thereof the purpose or function of which is not required for compliance with the Final Specifications.

f. "Licensed Product" means any product of Adopter which is compliant with a Final Specification.

g. "Member" means any member of AMTSO.

h. "Name" means "Anti-Malware Testing Standards Organization" or "AMTSO".

2. PATENT AND COPYRIGHT LICENSES

a. Copyright License. Adopter hereby accepts from each Contributor a worldwide, perpetual (except as set forth in Section 2(f)), royalty-free, nontransferable, nonexclusive, non-sublicensable license under Contributor's copyrights in all or any portion of the Final Specifications to reproduce and distribute (in any and all print, electronic or other means of reproduction, storage or transmission) the Final Specifications.

b. Limited Patent License. Adopter hereby accepts from each Contributor a worldwide, perpetual (except as set forth in Section 2(f)), royalty-free, non-transferable, nonexclusive, non-sublicensable, license under Contributor's Licensed Claims to perform or otherwise use any Final Specification solely to make, have made, use, sell, offer for sale, import and otherwise distribute and dispose of products which are compliant with such Final Specification. Adopter may not (i) modify or create derivative works of any of the Final Specifications except as necessary to fulfill the purpose described above or (ii) incorporate the Final Specifications into any product.

c. Contributions. This Section 2(c) shall only be applicable to Adopters which are also Contributors. Adopter, in its capacity as a Contributor, agrees that it is automatically granting licenses as set forth in Sections 2(a) and 2(b) to each licensee which (i) executes a license agreement with AMTSO in the same form as this Agreement and (ii) is an Adopter under such

license agreement. Each such Adopter is expressly made a third party beneficiary of this Section 2(c). All Contributors have executed and delivered a license agreement in the same form as this Agreement and have submitted a confirmation of contribution to AMTSO for each contribution, the form of which is attached hereto as Exhibit A, either by electronic mail, facsimile or other electronic file. Any confirmation of contribution may be executed on behalf of Contributor by any of Contributor's representatives designated in Contributor's AMTSO membership agreement or otherwise (as such representatives may be updated from time to time), by any officer of Contributor or any other authorized representative or signatory of Contributor. Subject only to the licensees granted to the Adopters, each Contributor shall retain all intellectual property rights in and to any contributions made to the Final Specifications. Without limiting the foregoing, each Contributor retains the right, but not the obligation, to enforce its rights in and to its intellectual property rights.

d. Non-Assertion. Adopter agrees, to the extent that it has any patents which cover the use of the Final Specifications in any manner permitted under Sections 2(a) and 2(b), not to assert, for the licensed use of any Final Specifications, any such patents against the Contributors, AMTSO, its Members, or any Adopter.

e. Affiliates. Adopter (excluding its Affiliates) represents and warrants that it has power to cause all patents owned or controlled by it and its Affiliates to be licensed as set forth in this Agreement.

f. Termination. If Adopter breaches this Agreement, then AMTSO may terminate this Agreement immediately if Adopter does not cure such breach within thirty (30) calendar days of receipt of written notice from AMTSO. Adopter may withdraw from this Agreement at any time by giving written notice to AMTSO. Notwithstanding any termination of this Agreement, the provisions of Section 2(c) shall survive. If Adopter's rights under this Agreement terminate, then Adopter shall cease using all Final Specifications immediately and cease making any claims of compatibility regarding any Final Specifications.

g. No Other Rights. Except as expressly set forth above, this Agreement shall not be construed as granting any rights or interests in or to any (i) Licensed Claims, (ii) improvements thereto, (iii) particular design, mode or method or (iv) proprietary rights of any party to this Agreement or any third party.

h. Attribution. Adopter shall include the following copyright notice on all copies of the Final Specifications or other documents by the Contributors, or such other additional attribution as the Contributors and AMTSO shall determine:

© Copyright [insert year] by [insert names of Contributors]. All rights reserved.

i. Infringement. Adopter shall use reasonable efforts to notify AMTSO of any suits or credible threats of litigation related to any Final Specification which may come to such Adopter's attention.

j. Claims of Compliance. Adopter may not claim that any version or release of any product complies with a Final Specification unless it is capable of passing the most current version of a Final Specification available one (1) year prior to the date of the first shipment of the software to customers. In addition, Adopter may not claim that any version or release of any product is compatible with any specific Final Specification unless such software is capable of passing such Final Specification's compatibility testing or other requirements set forth therein. Adopter shall make

information available regarding the version of the Final Specifications passed, upon request. Adopter agrees that any claims regarding compliance with any Final Specification will be factually accurate and will not be misleading.

3. USE OF THE NAME

a. Prohibition on Registration of the Name. Adopter shall not register or attempt to register the Name or any name, trademark, or service mark confusingly similar to the Name, or register any second level domain name that uses the Name in a way likely to create confusion regarding the ownership of the second level domain name, anywhere in the world. If Adopter holds a second level domain name that uses the Name as described above, then Adopter will (1) redirect it to the official AMTISO website and (2) assign it to AMTISO upon request of AMTISO.

b. Required Use of the Name. Adopter agrees that when it refers to any Final Specification, it will use the Name or use some other means to accurately describe AMTISO as the origin of such Final Specification. Except as provided in the previous sentence, Adopter shall not be obligated to use the Name on any product, advertising, or other materials in any manner. Adopter uses the Name at its own risk.

c. Limitations. Adopter will use the Name only for the limited purpose of promoting AMTISO organization and the use of a Final Specification, and for labeling, promoting, and marketing of Licensed Products. Adopter shall not use the Name or any name, trademark, or service mark confusingly similar to the Name to promote, or refer to, other initiatives or technologies.

d. Name Change. AMTISO may change the name of any Final Specification or the name by which this Agreement is identified. However, no such name change shall have any effect on the rights and obligations of the parties under this Agreement.

4. GENERAL

a. Antitrust Compliance. The parties are committed to fostering open competition. The parties acknowledge that Adopter may compete with any Member and any other Adopter in various lines of business and that it is therefore imperative that they and their representatives act in a manner that does not violate any applicable antitrust laws and regulations. Adopter may design, develop, manufacture, acquire or market competitive specifications, products and services, and conduct its business in whatever way it chooses. Adopter is not obligated to announce or market any products or services. Without limiting the foregoing, Adopter shall not to engage in discussions that would violate the antitrust laws and shall abide by the antitrust guidelines adopted by AMTISO.

b. Effective Date. Provided that AMTISO has entered into an agreement in the same form as this Agreement with each Contributor, this Agreement shall become effective when executed by Adopter and AMTISO.

c. No Other Licenses. Except for the rights expressly provided by this Agreement, AMTISO, its Members and Adopter neither grant nor receive, by implication, or estoppel, or otherwise, any rights under any patents or other intellectual property rights.

d. No Warranty. The parties acknowledge that all information provided as part of the Final Specification is provided "AS IS" WITH NO WARRANTIES WHATSOEVER, WHETHER EXPRESS,

IMPLIED, STATUTORY, OR OTHERWISE, AND EACH OF THE PARTIES EXPRESSLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR ANY PARTICULAR PURPOSE.

e. Limitation of Liability. IN NO EVENT WILL AMTSO, ANY OF ITS MEMBERS OR ADOPTER BE LIABLE TO EACH OTHER OR ANY OTHER PARTY FOR THE COST OF PROCURING SUBSTITUTE GOODS OR SERVICES, LOST PROFITS, LOSS OF USE, LOSS OF DATA OR ANY INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, DIRECT, INDIRECT, PUNITIVE, OR SPECIAL DAMAGES, WHETHER UNDER CONTRACT, TORT, WARRANTY OR OTHERWISE, ARISING IN ANY WAY OUT OF THIS OR ANY OTHER RELATED AGREEMENT, WHETHER OR NOT SUCH PARTY HAD ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. No party to this Agreement will bring a legal action under this Agreement more than one (1) year after the cause of action arose.

f. Governing Law; Jurisdiction. This Agreement shall be construed and controlled by the laws of the State of California without reference to conflict of laws principles. All disputes arising in any way out of this Agreement shall be heard exclusively in, and the parties irrevocably consent to jurisdiction and venue in, the Federal courts of the State of California. The proceedings shall be conducted in the English language. The parties hereby waive any right to trial by jury. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

g. Compliance with Laws. The obligations of the parties shall be subject to all applicable laws, orders, regulations, directives or requests of any governmental entity. Without limiting the foregoing, the parties shall comply with all applicable export, re-export and foreign policy controls and restrictions.

h. Notices. All notices given pursuant to this Agreement shall be in writing and sent by recognized overnight courier to the address set forth on the signature page to this Agreement. Such notices shall be deemed served when sent. Any party may give written notice of a change of address and, after notice of such change has been received, any notice or request shall thereafter be given to such party at such changed address.

i. Complete Agreement; No Waiver. This Agreement sets forth the entire understanding of the parties and supersedes all prior agreements and understandings relating hereto. No modifications or additions to or deletions from this Agreement shall be binding unless accepted in writing by authorized representatives of each party, and the waiver of any breach or default will not constitute a waiver of any other right hereunder or any subsequent breach or default.

j. Severability. If any provision of this Agreement is determined by a court to be unenforceable, then the parties shall deem the provision to be modified to the extent necessary to allow it to be enforced to the extent permitted by law, or if it cannot be modified, the provision will be deleted from this Agreement, and the remainder of the Agreement will continue in effect.

k. Assignment. Adopter may not assign its rights or obligations under this Agreement without the prior written consent of AMTSO. For purposes of this Agreement, an assignment shall be deemed to include a transfer or sale of all or substantially all of the business of Adopter, or a merger, consolidation or other transaction that results in a change in control of Adopter. Any purported assignment in violation of this Section 4(k) shall be void.

l. Independent Contractors. The relationship of the parties is that of independent contractors. Nothing in this Agreement shall be construed as requiring Adopter to use the Final Specifications, or limit the Adopter from competing in any way, including engaging in activities, independently or with others, that may be deemed competitive with the Final Specifications. This Agreement does not give either party the power to direct the day to day activities of the other, constitute the parties as partners, joint venturers, co-owners or principal-agent, or, except as expressly provided herein, allow either party to create or assume any obligation on behalf of the other party.

m. Electronic Acceptance. This Agreement may be executed either electronically or on paper. If this Agreement is executed electronically, by clicking on the "Accept" button, Adopter warrants that this Agreement is legally binding upon Adopter. If Adopter does not agree to be bound by this Agreement, then Adopter shall click the "Decline" button.

n. Counterparts. This Agreement is intended to be executed in multiple counterparts (electronically and on paper), each of which shall be deemed an original, but collectively shall constitute one and the same instrument. Signatures received by facsimile or PDF scanned electronic file shall be deemed to be original signatures.

<remainder of page left blank>

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the later of the dates set forth below.

AMTSO:

Anti-Malware Testing Standards Organization, Inc.

By: _____

Name: _____

Title: _____

Date: _____

Notice Information:

Address: AMTSO
c/o Paul J. Tauber,
Coblentz, Patch, Duffy & Bass LLP
One Montgomery Street, #3000
San Francisco, California 94104
Attention: General Counsel

Telephone: +1-415-391-4800

e-mail: legal@amtso.org

Adopter:

Company: _____

By: _____

Name: _____

Title: _____

Date: _____

Contact Information:

Address: _____

Attention: _____

Telephone: _____

Fax: _____

e-mail: _____

EXHIBIT A

Form of Confirmation of Contribution

I hereby confirm that any contributions made by me or, if applicable, my employees or contractors which were incorporated into the Final Specification listed below are contributed and licensed pursuant to Section 2 of that certain Contribution and License Agreement entered into with the Anti-Malware Testing Standards Organization, Inc., a California nonprofit mutual benefit corporation.

Final Specification(s):

Date: _____, 2____

(Name of Contributor – entity or individual, as applicable)

By: _____
Signature of Contributor

Name: _____
(complete only if signing on behalf of entity)

Title: _____
(complete only if signing on behalf of entity)