



# Certified Open<sup>®</sup> - Operating Principles

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# Programme Structure

It is a widely accepted principle that open, fair and free competition is desirable in most markets. Certified Open® is designed to help measure and encourage competition through the provision of a framework for evaluating technical and commercial lock-in that may reduce the ability of suppliers to compete in the provision of software, hardware and services.

What is not frequently understood is that lock-in can come not only from the purchase and adoption of proprietary solutions, but also from the restricted skills capability, either in-house or in local partners, that this can cause.

Lock-in to a single vendor or single architecture is a long-standing feature of the computing industry. Certified Open provides a means to detect and measure the lock-in that the customer may incur through the use of particular products. It is then for the customer to decide whether that is a factor to use in making deployment decisions.

Certified Open is designed to ensure the effective removal of constraints in terms of the openness of IT solutions – in short, the creation of freedom in infrastructure decisions through the removal of factors affecting supplier lock-in.

There are two key initiatives within the programme:

- The Certified Open Products and Services Programme that verifies that both the products or the services created by an organisation are 'certified open'; and
- The Certified Open Community of Practice that assesses an individual's competence against an industry agreed competency framework

Certified Open is targeted at all organisations (large and small) operating within ICT and represents strong value propositions for all stakeholders.

The key collaterals for each of these programmes are two industry-agreed, highly granular, frameworks:

- The Certified Open Products & Services Framework – that defines the characteristics products & services must achieve if they are to be seen as fully open; and
- The Certified Open Competency Framework – that defines the skills that IT Professionals should have in order to be proficient in the delivery of open solutions.

The core programme has been designed to provide a solution for all user organisations and suppliers to ensure that they can follow best practice in terms of product development/ procurement/ outsourcing by providing a framework in which all products, services and skills are measurably open.

Certified Open was initially jointly developed by OpenForum Europe (OFE) and the Institute of IT Training (IITT) within the Open Source Academy project in the UK, and by OFE within the TOF-E project. OSA was an eInnovations project funded by the UK Government's Office of the Deputy Prime Minister, aimed at encouraging and accelerating the use of OSS within UK Local Government. TOF-E was the consortium based market validation project part funded under the EC's eTEN programme, and tested a network of community based portals supporting OSS, particularly in the SME sector.

UK Local Government provided the pilot market for the first version of Certified Open, and both the Competency Framework ( Skills Tracker) and Product and Services Framework were first introduced in March 2006.

Since that time significant further development work has continued on Certified Open, led by OFE and FSFE and associated organisations (inc FFII, Socitm SOSS, Open Ireland, Open Advantage). The next step in 2007 is to relaunch the Product and Services Framework within Certified Open as a pan European programme . Certified Open will continue to be trialled from October to January 2008 before going on General Release in Spring 2008.

The Competency Framework is undergoing further development and will be subject to release at a further

date.

All software and content within Certified Open will be made freely available under the GNU General Public License (GPL), GNU Free Documentation License (FDL) and/or Creative Commons Attribution-ShareAlike (by-sa). Use of the Certified Open brand and logo is protected by Trade Mark registration across Europe. This trademark is held by Certified Open Ltd.

To protect the investment and commitment in Certified Open, Certified Open Ltd has been established in the UK a not-for-profit, limited by guarantee company – and has created in such a way as to ensure that since there is no equity, no profits can be distributed. This is seen as a first step towards establishing a Foundation. The Board is constituted currently by representatives from OFE and the Free Software Foundation Europe as equal partners.

The three month trial mentioned above constitutes a beta testing period. Suppliers and user organisations are encouraged to sign up for the trial with the knowledge that the results will not be made public and fees will be waived. The trial is governed by the Memorandum of Understanding in **Appendix 3** of this document.

A Governance Council has been established to ensure maximum input, strategic direction and input into governance and appeals processes. This seeks maximum representation from communities and interested organisations. Current members are listed on the Certified Open website.

Any financial surplus generated by Certified Open will be retained by Certified Open Ltd for further development of the certification programme and support of the community.

## Overview for Public Sector Organisations

Analysis by OFE has indicated that due to lock-in to proprietary solutions up to 90% of public sector organisations no longer have the freedom to choose ICT solutions on the basis of competitiveness, functionality or price. This is not only limiting their strategic direction and opportunity for technological innovation, but also the effectiveness of their delivered service to users and the the public. Much of this lock-in is not visible and inadvertent and results from 'hidden' lock-in caused from application purchases.

Certified Open® Programme enables ICT managers and procurement officers to:

- Ensure that procurement decisions take open standards and the potential for lock-in into account when procurement decisions are made.
- Ensure that ICT managers can manage the skills of their staff and provide a lifelong learning environment as the basis for professionalism.
- Allows effective choice of partners when outsourcing support, integration or services.
- Encourages use and participation in shared development software projects, particularly those involving other national or pan European public sector partners.

## Overview for Private Sector Corporate Organisations

There is no equivalent research to measure the degree of lock-in within private sector organisations, but anecdotal evidence suggest it may be comparable to that of the public sector. Organisations no longer have the freedom to choose on the basis of competitiveness, functionality or price their next IT solution. Loss of ability to maximise innovation as applied to the business strategy and impact on organisational competitiveness is seen to be equally strong.

Certified Open® Programme enables ICT managers and purchasing departments to:

- Ensure that purchasing decisions take open standards and the potential for lock-in into account when purchasing decisions are made.
- Ensure that ICT managers can manage the skills of their staff and provide a lifelong learning environment as the basis for professionalism.
- Allows effective choice of partners when outsourcing support, integration or services.
- Maximise speed and implementation of new innovation into the business.

## Overview for SME user organisations

SME organisations are particularly prone to lock-in from proprietary solutions, they frequently do not possess internal ICT skills to challenge external proposals, and are heavily dependent on the skills and competencies of their external solution and support partners. EC research indicates SMEs have the most to gain from such open solutions (including those built on Free Software/open source).

Certified Open® Programme enables SMEs to:

- Ensure that purchasing decisions take open standards and the potential for lock-in into account when purchasing decisions are made.
- Ensure that managers can manage the skills of their staff and provide a lifelong learning environment as the basis for professionalism.
- Allows effective choice of partners when outsourcing support, integration or services.
- Maximise speed and implementation of new innovation into the business.
- Benefit from lower cost alternatives.

## Overview for Solution Providers

The Certified Open® Programme will appeal to all ICT suppliers to the public sector and to SME and corporate users in the private sector. For the large suppliers it again provides evidence of the independence of their solution and support for the larger community. For the SME ICT supplier it provides a level playing field from which to operate, benefiting from greater visibility and recognition of unique strengths and differentiators. In all cases it enables the company – and its channel – to position itself effectively in terms of:

- The openness of its products and services;
- The openness of services provided by channel partners;
- The professionalism of its staff;
- The basis of effective hiring decisions.
- Its strength as a potential long term partner.

## Overview for Consultancy Providers

Consultancy service providers have a particular additional benefit from Certified Open. Certified Open® provides an independent base for audit and strategic ICT advice to user organisations while also providing all of the benefits listed above. For the large suppliers it again provides evidence of the independence of their consultancy and support for the larger community. For the SME ICT supplier it provides a level playing field from which to operate, benefiting from greater visibility and recognition of unique strengths, skills and differentiators. In all cases it enables the company to position itself effectively in terms of:

- The openness of its services (and potentially its own products and those of selected partners).
- The independence of its advice.
- The professionalism of its staff.
- The basis of effective hiring decisions.
- Its strength as a potential long term partner.

## Overview for Free Software/Open Source Product Providers

Certified Open® allows a provider to quantify and demonstrate to customers and users the freedom offered by Free Software solutions while emphasising the professionalism and commercial viability of the concept. This is likely to be particularly important when the product is being considered for use and integration within a business environment when it may be directly compared with a proprietary solution. Certified Open will provide independent endorsement allowing a 'levelling of the playing field', and give added security to purchasers in both the private and public sector who may not have detailed understanding of community

processes. By this, Certified Open will help to remove lock-in effects in areas where wide adoption has thus far not taken place.

## Products and Services

Certified Open® provides a self-certified framework within which products can be evaluated in terms of the amount of lock-in that they incur when deployed by users. The framework is intended to be consistent across a range of products and is designed from the users' not the suppliers' point of view. Within the context of Certified Open, the term 'open' can be taken to mean:

- Freedom from vendor lock-in
- Openness to substitution by competing products

The questions are necessarily broad in scope. Whilst it would be possible to certify a product by adhering 'to the letter' of the questions, the intent of this framework is to provide a broad guide to the practical degree of lock-in that is likely to occur when a product is used in the ways envisaged by its designers and suppliers. It is therefore important to understand the spirit as well as the letter of the framework when responding.

Lock-in to a product can occur in many ways. This framework sets out to clarify the obvious forms of lock-in that occur via technical issues such as for example:

- Dependence on undocumented or proprietary protocols
- Dependence on undocumented or proprietary data formats
- Licensing terms that preclude the use of alternative products
- Reliance on extensions to standards whereby users are obliged to use those extensions to obtain good performance
- The use of 'standards' that are based on patents or other forms of restrictions that constrain others from providing compatible competing implementations

The framework should be used to ascertain the degree of lock-in implied by the use of a product and then users may make their own decisions based on their requirements.

To achieve this, the framework also takes into account commercial practices such as licensing or marketing agreements to the extent where they may result in reduced substitutability as far as the user is concerned. It does not address customer retention through such practices as the provision of better support or lower prices than competitors unless those are on discriminatory grounds.

This framework attempts to provide consistent way to evaluate the cost and difficulty of substituting one product with another that performs equivalent functionality as far as its user is concerned. Most industries have the concept of plug-compatible parts where a component supplied by one vendor can be substituted by components supplied by others. The IT industry can demonstrate partial success in these areas. Examples of generally low lock-in include:

- PCI cards for purposes such as network connectivity, graphics displays and similar tasks
- SMTP mail exchangers such as Postfix, Sendmail, Exim providing broadly compatible services
- The IP networking stack (TCP, UDP, ICMP etc.) which has been reimplemented many times
- MIME email clients using SMPT, POP and IMAP
- Database technology based on standards, capable of use in a range of environments (those environments sometimes known as 'platforms')

For the user, lock-in to a single product is one issue, consequential lock-in is another. Examples of consequential lock-in are where for instance: a product implies the use of another such as the operating environment e.g. software that only runs on one vendor's operating system; a product is dependent on services from a proprietary server architecture that is not itself substitutable; a product depends on data formats that can only be accessed via a proprietary tool set; and of course many others.

The assessment framework requires evaluation of the product across the following domains:

- Client View - Describes the way in which the end-user interacts with the product.
- Software View - Broad, covering both software as an entity and as a component.
- Hardware View - describes the physical devices associated with the product.
- Data View - The data created, used or stored by the product.

- Business View - Recognises that lock-in is not only a technical matter.

Each product or service is evaluated and given an appropriate (gold/ silver/ bronze) certificate. The level of certification works like this; in terms of the overall scores:

Gold – 90%+ score

Silver – 60 – 89% score

Bronze – 40 – 59% score

The full certificate will provide a breakdown for each of the 5 categories (Client View etc.) as to whether, within the categories, the product or service is at Gold/ Silver or Bronze level. A copy of the Certified Open certificate is attached as Appendix 1

The Certified Open Programme in general, and the Certification Framework in particular, represent strong value propositions for each of the key stakeholders:

- Public Authorities – readily available accepted criteria against which to assess the openness of products and services.
- Procurement – the ability to specify and objectively assess the openness of products and services.
- Hiring Managers – the ability to assess products and services developed by would be job applicants.
- External Service Providers – differentiation based on the degree of openness achieved by the product or service; in addition, a tool to guide developments by accredited partners.
- Free Software/Open Source Product Providers – greater visibility for quantified advantages of services and products offered.
- Enterprise Computing – the greatest possible level of granularity for ensuring openness of products and services in order to avoid supplier lock-in.

The form to fill in is attached; one form for each product, service or solution should be submitted to the address shown on the completed form and website.

## Skills

A forthcoming aspect of Certified Open® is the SkillsTracker – a web-based skills assessment tool. This will be a self-assessment process:

- Mapping certifications and qualifications to the framework;
- Mapping courses to the framework; and
- Providing a methodology for manager sign-off for work-place developed skills.

The following Specialisations are planned to be included within the SkillsTracker Programme:

- Operating Environment
- Interoperability
- Networking
- Hardware
- Utilities
- Applications
- Business management
- Database management
- Development
- Security
- Community Issues
- Migration

The Certified Open SkillsTracker will represent a strong value proposition for each of the key stakeholders:

- Public Authorities – readily available poll of validated skills and resources – both internal and external; basis for establishing IT Professionalism within the Free Software environment.
- Procurement – sound basis for evaluation tenders that require open source skills.
- Hiring Managers – assurance that claimed skill sets are realistic.
- External Service Providers – differentiation based on quality of staff and demonstrable support for the community; in addition, clear channel management benefits in terms of skills management.
- Free Software/Open Source Product Providers – minimisation of the impact of lack of skills on market growth.

- Training/Certification Providers – a driver for training and certification – it overcomes the key objection that IT Professionals don't know what they don't know!
- IT Professionals – demonstrate their ability within an industry recognised competency framework, providing clear career development goals, and providing an "outputs-based" CPD record of value to the community.
- Enterprise Computing – full realisation of the benefits of Free Software/open source.

## Pricing

Participation in the Certified Open® Programme will be open to all.

During the Market Trial Period from October 2008 until January 2009, all registration fees detailed below will be waived. Certifications confirmed by the supplier at the end of the trial period will remain valid until the end of 2008.

Participation in the programme for Products and Services:

- Unlimited Certificates for 1 Year €4,000 (£2,750)
- Individual Certificates\* €400 (£275)

These are annual amounts except \* which is annual unless there is a major new release in that time, at which point 50% fee is repayable. Minor releases may be notified for free if they do not impact any answer.

Non – commercial projects developed by a community and released freely under a recognised Free Software license will have registration fees waived. However, products resulting from such a development and distributed as part of a commercial solution ( eg via a dual licence) or a commercial solution developed as Free Software or from OSS components will not benefit from this waiver.

## Supporter Benefits

The Certified Open® Programme will substantially increase the visibility of openness as a whole and is specifically related to quality and differentiation within the provision of products, services or solutions in which openness is a factor.

The Certified Open Supporter programme enables leading edge organisations to become programme supporters and have their logo associated with the Certified Open launch, promotions and programmes.

The package provides:

- Unlimited registrations of your company's products
- Your company's name/logo on all Certified Open publicity, brochures, records and certificates, accreditation programme documentation and certificates, and web site.
- Your company's name/logo on all Certified Open reports.
- Promotion as a supporter in the extensive publicity programme for the programme launches in 2008, which will include regular press coverage through a series of Press Releases.
- Promotion as a supporter in the full colour brochure, distributed widely.

The supporter programme is annually renewable. NB Only a limited number of supporter packages will be available.

The current fee is €10,000

# Terms and Conditions

A Certified Open On-Line Order Form and Certification Form – will be all that is required to sign up for the programme. The key terms and conditions are:

## 1.0. Definitions

- 1.1. Capitalized terms used in this Agreement shall have the following meanings.
- 1.2. “Application” means a software applications listed in the Schedule, as amended from time to time.
- 1.3. “Fees” means the fees specified in the “Pricing” section of the Principles.
- 1.4. “Framework” means the current version (as amended from time to time) of the Certified Open Product and Services Framework, which is available on the Site.
- 1.5. “Associated Rights” means all rights in copyrights, design rights, trademarks, service marks, patents, trade secrets, know-how and similar rights, whether registered or unregistered, throughout the world.
- 1.6. “Marks” means the “Certified Open” trademark and logo, and any other trademark or service mark designated by CO from time to time for use in connection with the Programme.
- 1.7. “Site” means the Certified Open website at [www.certifiedopen.com](http://www.certifiedopen.com)
- 1.8. “On-Line Order Form” means the Site On-Line Order Form referred to at the beginning of this Agreement.
- 1.9 “Principles” means the current version (as amended from time to time) of the Certified Open Operating Principles, which are available on the Site.
- 1.10. “Programme” means the “Certified Open” programme, as described in the Principles, Framework and other documentation issued by CO from time to time.
- 1.11. “On-Line Certification Form” means the set of questions set out in the Framework.
- 1.12. “Schedule” means the above Schedule of Certified Applications.
- 1.13. “Score” means an “openness” score for a software application calculated under the process set out in the Framework and the Principles, and shall include both the numerical score and the level of certification (Certified Open Gold, Silver or Bronze) associated with the numerical score.
- 1.14. “Trademark Guidelines” means the guidelines regarding the use of the Marks that are attached as Exhibit A.

## 2.0. Certifications

- 2.1. Applicability. If services are selected in the category “Certification of Products and Services” on the On-Line Order Form, this Agreement provides for certification of the Applications under the Programme.
- 2.2. Schedule of Applications. Member may include in the Schedule any software application that it has the right to sell to unaffiliated third parties. Member may amend the Schedule at any time by providing a revised version of the Schedule to CO, and paying the relevant Fees.
- 2.3. Certification Process. Certification of Applications shall take place under the Framework and the Principles, as follows:
  - Member shall be entitled to certify an Application upon payment of the relevant Fees.
  - Member shall initiate the certification process by completing the On-Line Certification Form, and providing the completed On-Line Certification Form to CO. CO shall decide in its reasonable

discretion whether the On-Line Certification Form is complete. If CO determines that the On-Line Certification Form is not complete, CO and Member shall cooperate to assist Member in completing the On-Line Certification Form.

- Once the On-Line Certification Form is complete, CO shall calculate the Score for the Application, and shall provide the Score on-line to Member.
- If (i) Member has not objected in writing or by email [appeals@certifiedopen.com](mailto:appeals@certifiedopen.com) to the Score within 5 days of receiving it or (ii) Member has accepted the Score in writing, CO shall post the Score and the On-Line Certification Form on the Site.
- The Score and On-Line Certification Form for an Application shall remain posted on the Site until (i) if Member does not pay renewal fees, (ii) at the request of Member, (iii) when a new version of the software is certified, (iv) at the discretion of CO

2.4. Appeals. Appeals of any aspect of certifications under this clause 2 shall be handled under the process set out in the Principles. Member hereby acknowledges and agrees that the finality of the appeals process is an important element of the Programme, and that no judicial or other challenges to certifications that are not set out in the Principles shall be available or permissible.

### 3.0. Skills Assessment – applicable to skills programme when released

3.1. Applicability. If services are selected in the category “SkillsTracker” on the Order Form, this Agreement provides for web-based skills assessment under the Programme.

3.2. Documentation. Skills assessment shall be carried out in accordance with the Principles and other Programme documentation related to skills assessment.

### 4.0. Fees and Payment

4.1. Member shall pay the Fees for:

- the items specified on the On-Line Order Form;
- annual renewal fees for the services specified on the On-Line Order Form (unless this Agreement has been terminated or Member indicates in writing to CO that it does not wish to renew particular services); and
- such other CO services that Member subsequently orders.

4.2. Invoices. CO shall invoice Member for Fees due as described on the Site which shall be updated from time to time. Invoices shall include applicable VAT in addition to the amount of the Fees.

4.3. Payment. Payment for services specified on the On-Line Order Form shall be due on the Effective Date, and subsequent payments shall be due within 30 days of invoice. Payment may be made by credit card (limited to cards accepted by CO) or Switch through PayPal. CO reserves the right to charge interest on overdue payments at a rate 4% above the base rate of Barclays Bank plc from time to time.

### 5.0. Associated Rights

5.1. All Associated Rights in the Marks, the Principles, the Framework and other Programme documentation belong to or are licensed to CO. This Agreement shall not confer any such rights on Member, except as explicitly provided herein. CO has granted additional rights in such materials through the licences under which they are distributed, including Creative Commons and GNU Project licences.

5.2. “Certified Open” is a registered trademark of Certified Open, and may not be used in connection with any product or service that is not a Certified Open product or service. Please contact us for further information on use of the Certified Open trademark with your products and/or services.

5.3. Certified Open grants the Member a non-exclusive, non-transferable, royalty-free license to use the Marks for the duration of this Agreement. Member shall use the Marks strictly in accordance with the Trademark Guidelines.

5.4. Member Licence. Member grants to CO a non-exclusive, non-transferable, perpetual, royalty-free licence to use all Associated Rights in the information provided by Member in the certification process under clause 2 (including information set out in On-Line Certification Form responses) that are necessary for the purpose of posting such information of the Site and using such information in the CO business (as described in the Principles).

## 6.0. Website Associated Rights

6.1. The Information on the Site includes text, graphics and other information that is protected by copyright, trademark or patent law as defined under UK law. All such rights are either owned by Certified Open or have been licensed to Certified Open by the owners to allow use as part of the Site.

6.2. The information contained on the site may be used in accordance with the terms of the GNU Free Documentation Licence (GNU FDL) version 1.2 or any later version published by the Free Software Foundation. A copy of this licence may be found at the following Internet address:  
<http://www.gnu.org/licenses/fdl.html>

6.3. You may not frame or mirror any part of the Site without prior written permission from Certified Open except as stated in this document and according to the licence terms outlined herein.

6.4. If you provide any information to us, by doing so you (i) agree to grant us all necessary Rights to use such information on the Site and in the Certified Open business and (ii) warrant to us that such use will not infringe the Rights of any third party.

## 7.0. Term and Termination

7.1. Term. This Agreement shall have an initial term of one year from the Effective Date. Thereafter, this Agreement shall continue in force for subsequent periods of one year each unless terminated in writing by notice given by either Party at least one month in advance of any annual anniversary of the Effective Date.

7.2. Termination. Either Party may terminate this Agreement by written notice to the other Party if:

- the other Party has committed a material breach of this Agreement, and such breach has not been cured for ten (10) days from the delivery of written notice to do so by the other Party; or
- the other Party becomes bankrupt or insolvent, seeks protection under any legislation relating to bankruptcy or insolvency, or is the subject of any order or other finding of bankruptcy or insolvency under such legislation.

7.3. Effect of Termination. In the event of any termination of this Agreement, Member will immediately cease all use of the Marks, and CO shall at its discretion keep or remove from the Site the Scores and On-Line Certification Forms for the Applications

7.4. Survival. The terms of this Agreement shall survive termination to the extent necessary to fulfill their intended purpose.

## 8.0. No Warranties

8.1. CO PROVIDES ALL SERVICES HEREUNDER ON AN "AS IS" BASIS. CO MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, AS TO SUCH SERVICES.

## 9.0. Indemnity

9.1. MEMBER AGREES TO FULLY INDEMNIFY, DEFEND AND HOLD HARMLESS CO AND ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS AND AFFILIATED COMPANIES FROM AND AGAINST ANY LOSSES, COSTS, OR DAMAGES (INCLUDING REASONABLE ATTORNEYS' FEES) RESULTING FROM CLAIMS BY THIRD PARTIES IN CONNECTION WITH THE MATTERS COVERED BY THIS AGREEMENT, INCLUDING WITHOUT LIMITATION CERTIFICATION OF THE APPLICATIONS; CALCULATION OF THE SCORES; PROVISION OF INFORMATION ON THE SITE, INCLUDING THE SCORES AND ON-LINE CERTIFICATION FORMS; AND USE OF THE MARKS.

## 10.0. Limitation of Liability

10.1. SUBJECT TO CLAUSE 3 BELOW, NEITHER PARTY SHALL BE LIABLE UNDER THIS AGREEMENT TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOSS, WHETHER DIRECT OR INDIRECT, OF PROFITS, BUSINESS OR ANTICIPATED SAVINGS) REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY OR OTHERWISE, IF SUCH DAMAGES ARE FORESEEABLE.

10.2. IN NO EVENT SHALL CO'S LIABILITY UNDER THIS AGREEMENT EXCEED THE AMOUNT OF THE FEES PAID BY MEMBER DURING THE PREVIOUS YEAR.

10.3. Neither Party seeks to exclude liability hereunder for death or personal injury resulting from its own actions.

## 11.0. Website Content, Accuracy and Availability; No Product Endorsements

11.1. Although Certified Open makes reasonable efforts to ensure that all information provided as part of this Site ("**Information**") is correct at the time of inclusion on the Site, Certified Open (i) makes no representations or warranties as to the completeness or accuracy of Information and (ii) makes no commitment to update or correct the Information.

11.2. The Information includes certification information on products and services under the Certified Open Product and Services Framework ("**Certifications**"). Most of the information included in Certifications is provided by third parties not affiliated with Certified Open. Although Certified Open makes reasonable efforts to review the contents of Certifications, Certified Open takes no responsibility for the accuracy or completeness of information included in Certifications. **Nothing on the Site is intended to be construed as a recommendation to use any product, including those covered by Certifications.**

11.3. Certified Open may change the format and/or content of the Site at any time. Certified Open may restrict the availability of the Site temporarily or permanently (including for support or maintenance work, in order to update content or for any other reason), and does not guarantee that the Site will be available to you at any particular time.

## 12.0. Website Disclaimer of Warranties; Limitation of Liability

12.1. You should make your own judgements about the suitability of the Site and the Information for your purposes. The Site and the Information are provided to you on an "as is" and "as available" basis, without any warranty (except as required by law). **To the fullest extent permitted by law, Certified Open (on behalf of itself and its directors, officers and employees, and third parties providing Information) disclaims all warranties, express or implied, with respect to the Site, the Information and the products to which they refer, including but not limited to warranties of merchantability, fitness for a particular purpose, accuracy, availability, and non-infringement of copyright, trademarks, patents and other third party rights.**

12.2. **Certified Open will not be liable to you or to any third party, whether in contract, tort including negligence (except for death or personal injury resulting from our negligence), or otherwise, for any consequential, incidental or indirect loss, or special, exemplary or punitive damages arising from or connected with the Site, including but not limited to your use of the Site or inability to use the Site, even if Certified Open has previously been advised of the possibility of such loss or damages.**

"Consequential loss" for these purposes shall include (i) pure economic loss (ii) loss incurred by a third party, (iii) loss of profits (whether direct or indirect), (iv) loss from business interruption (including increased cost), (v) loss of revenue, good will or anticipated savings, (vi) wasted management or staff time or (vii) loss or corruption of data.

12.3. You agree to indemnify and hold harmless Certified Open, and its directors, employees, suppliers and affiliates, from and against any damages or costs (including, without limitation, reasonable lawyers' fees) that arise directly or indirectly from your breach of these Terms.

12.4. While Certified Open makes every effort to ensure the accuracy and correctness of content contained within or presented by this website, Certified Open cannot accept responsibility for any loss, damage or other perceived harm that may occur to third parties due to such content. Nevertheless, and without in any way invalidating the previous statement, if a cause for concern is identified please contact Certified Open at [info@certifiedopen.com](mailto:info@certifiedopen.com).

## 13.0. General

13.1. Governing Law and Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of England and Wales. Except as provide in clause concerning **Certification – Appeals** as detailed above, the Parties submit to the exclusive jurisdiction of the courts of England for resolving any disputes arising in connection with this Agreement.

13.2. Assignment. Neither this Agreement nor any rights or obligations of Member hereunder may be assigned by Member in whole or in part without the written consent of CO.

13.3. Relationship of the Parties. This Agreement does not constitute the Parties as partners, joint venturers, principal and agent, or otherwise participants in a joint undertaking, or allow either Party party to create or assume any obligation on behalf of the other Party, except as explicitly provided in this Agreement.

13.4. Severability. If any provision of this Agreement is found by a court of competent jurisdiction not to comply with any applicable law, such provision shall to the extent possible be interpreted so as to comply with such law or condition or, if such interpretation is not possible, shall be deemed amended to satisfy the requirements thereof. Any provision hereof found invalid or unenforceable shall be severed from this Agreement, the balance of which shall remain enforceable.

13.5. No Waiver. No Party shall by failure to give notice or take other action hereunder be deemed to have waived any breach by the other Party of this Agreement. Further, the waiver by a Party of a particular breach shall not constitute a continuing waiver of such breach or of other breaches of this Agreement.

13.6. Rights of Third Parties. Nothing in this Agreement shall create any rights for, or enforceable by, any third party under the Contracts (Rights of Third Parties) Act 1999.

13.7. Entire Agreement. This Agreement states the entire agreement of the Parties regarding its subject matter, and supersedes all prior agreements and other communications between the parties, oral or written, regarding such subject matter.

13.8. Amendment. This Agreement may be modified only by a subsequently dated written amendment signed on behalf of each Party.

13.9. Conflict. If there is any conflict between terms of this Agreement and the Principles, Framework or other Programme documentation, the terms of this Agreement shall prevail.

13.10. Notices. Any notices pursuant to this Agreement shall be in writing, and shall be sent to the address of the relevant party set out on the first page of this Agreement, or such other address as is notified by such party from time to time. Notices may be sent by first-class mail or facsimile transmission provided that facsimile transmissions are confirmed within 24 hours by first-class mailed confirmation of a copy. Correctly addressed notices sent by first-class mail shall be deemed to have been delivered 72 hours after posting and correctly directed facsimile transmissions shall be deemed to have been received on transmission provided that they are confirmed as set out above.

## 14.0. Appeals Process

14.1. The appeals process applies to both the skills and the product service programmes – but more

especially to the latter.

14.2. In the first instance, any individual or organisation will be able to appeal to the CO Programme administrators [appeals@certifiedopen.com](mailto:appeals@certifiedopen.com) for a review of any claim that either a product or service fails to achieve the certified open status it claims or that an individual does not possess the skills they claim.

14.3. In the first instance, the Review Panel will determine if the basis of the appeal has merit; if it does it will be initially investigated at no cost to either party.

14.4. If the conclusion is that there is little merit in the appeal the appellant will be advised and may, at their option, request that the appeal is fully investigated. The appellant will pay a deposit of €750 (£500) to cover the costs of the investigation.

14.5. Where a appeal is taken forward – whether or not on the basis of a deposit – the review panel will:

- Make the details of the appeal visible to the individual or organisation about which the appeal is lodged;
- Require a comprehensive response from the organisation/ individual within 10 working days – subject to an extension if it would not be unreasonable;
- Make a decision based on the merits of the two arguments and make both parties aware of that decision.

14.6. In the event that either party wishes to appeal against the decision of the Review Panel, a further deposit of €3000 (£2,000) will be required to be made by the party appealing the decision.

14.7. The appeal will be heard by the appeals sub-committee of the Certified Open Council and their decision will be final. The sub-committee may require attendance at the review and may call for additional evidence from both sides in order to reach its conclusion.

14.8. Any monies paid on deposit will be dealt with as follows:-

- 50% to the body to whom the decision was awarded;
- 50% retained by CO to cover administrative costs.

14.9. The damages outlined in this clause will be the only payments made to either party, by either party, unless otherwise agreed

14.10. The web site will maintain an alert system so that any individual within one of the relevant Certified Open Communities of Practice may indicate a cause for concern and the basis of that concern; this will enable all organisations participating in the programme to have an “early warning system” of any potential infringements or upcoming issues.

## 15.0. Conduct of the Parties

15.1. In connection with this Agreement and Member's participation in the Programme, CO and Member shall abide by their obligations under the Framework and the Principles, including in particular that Member shall abide by the Code of Conduct set out in the Principles.

## 16.0. Code of Conduct

16.1. All participants within the Certified Open Programme agree to abide by the Code of Conduct that defines the way in which member companies and individuals will relate to both their employers and their clients.

16.2. With respect to clients and other organisations – members shall, in respect of any claims they make in relation to openness:-

- Act with integrity, honesty and professionalism;
- Be proactive and supportive in relations with others;
- Demonstrate fairness, sympathy and integrity with others;
- Take all appropriate actions in relation to timeliness, correctness, and quality of service;
- Take all appropriate actions to accommodate and adhere to budgetary requirements.
- Not make any public statements, in a professional capacity, unless appropriately qualified and

suitably authorised.

- Seek to adopt the most relevant methods and provide the best advice regardless of commercial benefit to themselves or any other party/organisation which may assume a vested interest.
- At all times declare any interest in any commercial or professional situation where this interest may have a bearing on any outcome and be detrimental to the business of their employer or client.

16.3. With respect to legal and legislative constraints – members shall, in respect of any claims they make in relation to openness:

- At all times act within the law and not knowingly support, encourage or collude with any other party (person, persons or organisation) which may be acting unlawfully, unprofessionally or unethically.
- Have knowledge of, and adhere to any legislation, standards or regulations which may be pertinent at any time.

16.4. With respect to an individual's professional status – members shall, in respect of any claims they make in relation to openness:

- Avoid any activity or conduct which may jeopardise the good reputation of their profession.
- Demonstrate honesty, diligence and appropriate behaviours in the context of their professional situation.
- Seek continual improvements in their professional performance through the updating and refreshing of skills and knowledge to reflect changes in the technology and the services they offer.
- Not provide false or exaggerated representation of their abilities, status, qualification or any other attribute which could have relevance in a professional context.

16.5. With respect to co-operation with Certified Open Ltd – members shall agree to abide by the Appeals process, to co-operate with it in any investigation, and to abide by its decisions. In addition, members will be expected to abide by the principles of operation contained within this document.

## 17.0. Website Acceptable Use

17.1. When using the Site, you agree that you shall not:

- interfere with or disrupt the Site or networks connected to the Site (e.g. through "hacking" or a "denial of service" attack);
- transmit any information or software that contains a virus, worm, time bomb, Trojan horse or other harmful code or "malware";
- post or transmit any unlawful, threatening, libellous, defamatory, obscene, pornographic, offensive, hateful or other similar material;
- impersonate any person or entity, misrepresent your affiliation with a person or entity, or misrepresent the origin of any content submitted to the Site;
- submit content to the Site that you do not have the right or authority to submit (such as trade secrets and confidential information); or
- violate any law, regulation or contract.

17.2. In addition, Certified Open requires that you agree and accept that:

- all posts will be on-topic
- English will be used as the preferred language
- the site and its content is subject to UK law
- questions will be restricted to a single topic
- constructive criticism is welcome
- no form of advertising is permitted
- links to other websites are relevant to the discussion at hand

17.3. This is a professional website and we expect Registered users to behave accordingly. The Moderator will use best judgement in assessing the intention and goodwill of people who post to this site or use its services. Certified Open reserves the right to advise and suspend users who breach the terms and conditions outlined in this document and other material related to Certified Open.

## 18.0. Website Links and Third Party Sites

18.1. The Site contains links to other websites that are not under the control of or maintained by Certified

Open. Such links do not indicate any responsibility or endorsement on our part for any external website concerned, its contents or the links displayed on it. You are entirely responsible for your use of such other websites, including any products, services or information from those sites that you obtain or purchase.

## 19.0. Supplier Guide

19.1. In order to commit to the programme, suppliers will be asked to:

- Sign an On-Line Order Form defining their level of participation in the programme;
- Complete a Certification Form for each product, service or solution they wish to certify; and
- Nominate the individuals they wish to register in the programme

## 20.0. User Guide – applicable to skills programme when released

20.1. In order to commit to the programme, users will be asked to:

- Sign an Order Form defining their level of participation in the programme;
- Register with Certified Open to participate within the Skills Programme; and
- Nominate the individuals they wish to register in the programme

## 21.0. Privacy Policy

21.1. Certified Open is committed to maintaining the privacy and security of your data. Our policy on the collection and use of personally-identifiable information about individuals, organisations or products (“Data”) and other information is set out below.

### 22.0. Data

22.1. We collect Data from visitors to the Site on a voluntary basis. Data may include name, title, company, address, phone number, email address, and other relevant data. Questions or comments submitted by visitors may also include Data.

22.2. We collect and use Data for business purposes:

- to seek your feedback or to contact you in relation to Information on the Site;
- to improve our operations, and anticipate and resolve problems with the Site;
- to develop our services to meet your needs;
- to process and respond to requests from you;
- to communicate with you about our services and businesses; and
- for other purposes related to the Certified Open programme.

22.3. Notwithstanding the previous paragraph, we will not send electronic communications to you unless you have agreed to receive such communications, excepting notification required for your subscribed participation in the Certified Open programme. However, if you email us, we may process your email address and the information contained in your email to respond to you.

22.4. Unless you have explicitly agreed otherwise, we will not use or share your Data with any third party, provided that:

- We may share your Data with our agents, affiliates or contractors for processing in accordance with this Privacy Policy. This may mean transmitting the information to another country (including countries outside the European Economic Area) where our agent, affiliate or contractor is located. We will ensure that our agents, affiliates and contractors protect your Data consistent with this Privacy Policy.
- If we transfer the Certified Open business to another entity, we may transfer your Data to that entity, subject to commitments that the data will be protected consistent with this Privacy Policy.

22.5. To the extent required or permitted by law, we may also collect, use and disclose Data in connection with law enforcement investigations, in the course of cooperating with government authorities or complying with legal requirements, or if we reasonably suspect that you have violated our Terms.

22.6. We may remove all the personally identifiable information from your Data, and process such

anonymous data for historical, statistical or scientific purposes.

## 23.0. Session Information and Cookies

23.1. We may collect and process information regarding your use of the Site ("Session Information"). This may include your domain name (the text after the @ in your email address) and the associated IP address, and could also include your user name (the text before the @ in your email address). The amount of information sent depends on the settings you have on your web browser; please check your browser if you want to learn what information it sends.

23.2. Session Information is processed primarily to assist us in providing an effective service via the Site. To the extent that Session Information is Data, it will be processed as described in the "Data" section above. We may from time to time publish or supply to third parties information about the number of users visiting the Site, without disclosing any Data.

23.3. We may store some information such as "cookies" on your computer when you view the Site. A cookie is a small file that a website transfers to a visitor's computer for record-keeping purposes. This information facilitates your use of the Site, reduces the need to re-enter information every time you visit the Site, and allows us to provide a personalised experience on the Site. You can erase or choose to block cookies from your computer if you want to; please refer to your browser settings to do so. Erasing or blocking cookies may limit the range of features of the Site that are available to you.

## 24.0. Information Regarding Children

24.1. This information and services offered by Certified Open on the Site are not directed at children or teenagers under 18 years of age. As a result, we do not knowingly solicit or collect Data about children or teenagers under 18.

## 25.0. Access to Data

25.1. You have a right to know about the personal information Certified Open holds about you. You also have a right to have your data corrected or deleted. If you have questions about any of your Data that we may hold, you can contact us at the following email or postal address:

[data.protection@certifiedopen.com](mailto:data.protection@certifiedopen.com)

Data Protection Officer  
Certified Open Ltd.  
Number One Tanner Street  
London  
SE1 3LE  
United Kingdom

## 26.0. Security

26.1. We have implemented technology and policies intended to protect your data from unauthorised access and improper use. We periodically review such technology and policies.

# Appendix 1 - Programme Certificate

This information will follow after the trial period of Certified Open.



## Appendix 2 - Memorandum of Understanding

**Memorandum of Understanding**  
between  
Certified Open Ltd (CO)  
and  
<company> (Company)  
(hereinafter referred to as "Parties")  
about  
Pre-Launch Test-Casing Certified Open

**General :**

Parties understand that the purpose of this agreement is to give Company access to the Certified Open services prior to public launch for the purpose of test-casing the web pages and certification, as well as helping to identify technological issues, including potential security issues.

**Parties agree :**

1. that participation of Company in the test does not constitute endorsement of Company for Certified Open and does not obligate Company to subscribe to Certified Open after launch.
2. that the results of the test cases will be treated confidentially and are used for the expressed purpose only.
3. that neither party will share the results of these tests or information about products with third parties.

**Company agrees :**

to inform CO about technological problems discovered, in particular when they might constitute potential security issues.

**Certified Open agrees :**

to treat all information submitted by Company into the CO infrastructure as confidential and for testing purposes only.

Agreed as stated <DATE>

<name>  
Director  
Certified Open (CO)

<name>  
<title>  
<company>

# Exhibit A - Trademark Policy

## REGULATIONS FOR USE OF THE CERTIFIED OPEN COLLECTIVE MARK.

[In this document, any reference to gender covers both men and women]

Certified Open Limited (hereinafter referred to as "CO Ltd"), a not for profit private company limited by guarantee, has its Registered Office at Claremont House, 1 Blunt Road, South Croydon, CR2 7PA UK. CO Limited which is jointly managed by OpenForum Europe (OFE) and the Free Software Foundation Europe (FSFE) owns the Certified Open brand, logo and trademark. CO Limited is a legal person governed by public law (Article 64(1) CTMR). All IPR contained in Certified Open is made available under either GPL, Creative Commons or equivalent licence. Certified Open was originally developed under the auspices of the Open Source Academy (OSA), part of e-Innovations Programme of the Office of the Deputy Prime Minister of the United Kingdom (ODPM) as well as under the EC e-TEN programme.

### 1.0 Objects

The object for which the company is established is to facilitate open competitive choice within Information Communication Technology (ICT) procurement decisions in both public and private sectors in Europe and elsewhere.

Specifically it has further objects as follows:

1. to ensure the effective removal of constraints in terms of the openness of ICT solutions and the creation of freedom in infrastructure decisions through the removal of factors affecting supplier lock-in for all organisations operating within the ICT supply chain, including the purchasers at the end of the chain;
2. to promote and assist a self-assessment methodology to enable organisations to evaluate product openness of hardware and software products and applications development;
3. to promote and assist a self-assessment methodology to enable organisations to evaluate product openness of ICT products and related services;
4. to provide a level of certification on product and service openness based on the self assessment methodology. The level of certification being determined by an overall scoring system and categorised into GOLD, SILVER and BRONZE;
5. to provide a members of organisations with an e-portfolio of open skills (the Certified Open SkillsTracker) so that they can demonstrate their skills in all matters relating to product and service openness;
6. to provide a definition of ethical behaviour (Certified Open Code of Practice) that determines the way in which members will practice relating to all things connected with product openness;
7. to impose penalties for non compliance to the Certified Open Code of Practice.

### 2.0 Programme Structure

Certified Open ensures the effective removal of constraints in terms of the openness of ICT solutions by the operation of:

- The "Certified Open Products and Services Programme" that verifies that both the products or the services created by an organisation are "certified open";
- The "Certified Open Skills Programme" that assesses an individual's competence against an industry agreed competency framework

There are 2 operable frameworks:

- The Certified Open Products & Services Framework – that defines the characteristics that products & services must achieve if they are to be seen as fully open;
- The Certified Open Competency Framework – that defines the skills that ICT Professionals should have in order to be proficient in the development and delivery of open solutions.

### 3.0 Products & Services

The Certified Open programme for Products and Services uses a self-assessment methodology; it enables organisations to evaluate the openness of core hardware and software, a generic application product, or a bespoke application development based on a framework that has been certified by the applicant as demonstrating openness.

Each product or service is evaluated and given an appropriate gold/silver/bronze certificate.

#### **4.0 Skills**

Skills management is managed by the Certified Open SkillsTracker – a web-based skills assessment tool that maintains an e-portfolio of the skills of a registered CO professional.

#### **5.0 Conditions of use of the mark**

All members of CO Limited are entitled to use the mark. Use of the mark must be in accordance with the evaluation and certificate outlined in Section 3.0. Use of the mark contrary to these regulations may result in imposition of the sanctions outlined in the regulatory and appeals procedure hearing.

#### **6.0 Members**

In the case of the CO Products and Services Programme, members will be the organisation that has implemented the product or service. In the case of the CO Skills Programme, members will be individuals. There is no limitation on the number of members within a company that may be registered. Members must follow the prescribed certification procedure, make payment of the annual participation fees determined by CO Limited and abide by the Certified Open code of conduct and appeals process.

The company is governed by a Board of Directors, the maximum number of which is twelve and in accordance with Table C schedule 1 Companies Act 1948.

#### **7.0 Records**

Records are kept by CO Limited containing the names of all members and showing the dates when they were admitted to membership with such other particulars as the Certified Open Council may have determined. The Register of Members is available through the registered office of CO Limited at the above address and the applicant will on request, and subject to the Data Protection Act 1998, be advised on a Member's category of membership. This information is freely available on request in normal working hours.

#### **8.0 Regulatory Procedure**

The Regulatory procedure of the Certified Open Programme is managed by the CO Ltd advised by the Certified Open Council, the members of which comprise nominees of OFE and FSFE.

In the Certified Open Programme there are severe sanctions imposed if an assessor – within either the products and services or the skills programmes – is found to have been inaccurate in the statements they have made.

These sanctions involve:-

- With immediate effect, all certifications of products, services and skills produced by the offending company will be withdrawn;
- The company will be required to re-certify products and services through witnessed assessment processes only for a period of one year;
- Witnessed certifications may only be performed by accredited third parties.

#### **8.1 Appeals Process**

- In the first instance, any individual or organisation will be able to appeal to the programme administrators [appeals@certifiedopen.com](mailto:appeals@certifiedopen.com) (The CO Council acting through a review panel) for a review of any claim that either a product or service fails to achieve the certified open status it claims or that an individual does not possess the skills they claim.
- In the first instance, the Review Panel will determine if the basis of the appeal has merit; if it does it

will be initially investigated at no cost to either party.

- If the conclusion is that there is little merit in the appeal the appellant will be advised and may, at their option, request that the appeal is fully investigated. The appellant will pay a deposit of such sum as the CO Council may from time to time determine to cover the costs of the investigation.
- Where an appeal is taken forward – whether or not on the basis of a deposit – the Review Panel will:-
  - Make the details of the appeal visible to the individual or organisation about which the appeal is lodged;
  - Require a comprehensive response from the organisation/ individual within 10 working days – subject to an extension if it would not be unreasonable;
  - Make a decision based on the merits of the two arguments and make both parties aware of that decision.
- In the event that either party wishes to appeal against the decision of the Review Panel, a further deposit of such sum as the CO Council may from time to time determine will be required to be made by the party appealing the decision.
- The appeal will be heard by the appeals sub-committee of the Certified Open Council and their decision will be final. The sub-committee may require attendance at the review and may call for additional evidence from both sides in order to reach its conclusion.
- Any monies paid on deposit will be dealt with as follows:-
  - 50% to the body to whom the decision was awarded;
  - 50% retained by CO Ltd to cover administrative costs.

The damages outlined in this clause will be the only payments made to either party, by either party, unless otherwise agreed

- The website will maintain an alert system so that anyone may indicate a cause for concern and the basis of that concern; this will enable all organisations participating in the programme to have an “early warning system” of any potential infringements or upcoming issues.

## 8.2 Code of Conduct

All participants within the Certified Open Programme agree to abide by the Code of Conduct that defines the way in which member companies and individuals will relate to both their employers and their clients.

- With respect to clients and other organisations – members shall, in respect of any claims they make in relation to openness:-
  - Act with integrity, honesty and professionalism;
  - Be proactive and supportive in relations with others;
  - Demonstrate fairness, sympathy and integrity with others;
  - Take all appropriate actions in relation to timeliness, correctness, and quality of service;
  - Take all appropriate actions to accommodate and adhere to budgetary requirements;
  - Not make any public statements, in a professional capacity, unless appropriately qualified and suitably authorised;
  - Seek to adopt the most relevant methods and provide the best advice regardless of commercial benefit to themselves or any other party/organisation which may assume a vested interest;
  - At all times declare any interest in any commercial or professional situation where this interest may have a bearing on any outcome and be detrimental to the business of their employer or client.
- With respect to legal and legislative constraints – members shall, in respect of any claims they make in relation to openness:-
  - At all times act within the law and not knowingly support, encourage or collude with any other party (person, persons or organisation) which may be acting unlawfully, unprofessionally or unethically;
  - Have knowledge of, and adhere to any legislation, standards or regulations which may be pertinent at any time.
- With respect to an individual’s professional status – members shall, in respect of any claims they make in relation to openness:-
  - avoid any activity or conduct which may jeopardise the good reputation of their profession;
  - demonstrate honesty, diligence and appropriate behaviours in the context of their

- professional situation;
- seek continual improvements in their professional performance through the updating and refreshing of skills and knowledge to reflect changes in the technology and the services they offer;
  - not provide false or exaggerated representation of their abilities, status, qualification or any other attribute which could have relevance in a professional context.
- With respect to co-operation with Certified Open Ltd – members shall agree to abide by the Appeals process, to co-operate with it in any investigation, and to abide by its decisions. In addition, members will be expected to abide by the principles of operation contained within this document.