

**THIS CONTRIBUTION AND LICENSE AGREEMENT (“AGREEMENT”)**, dated \_\_\_\_\_ (“Effective Date”), is entered into by and among, Initiative for Open Authentication/OATH. with an address for the purposes of this Agreement at 217 Bahia Ct., San Jose, CA 95119 (“OATH”), each party that signs a counterpart signature page to this Agreement on the Effective Date, and each subsequent party that signs a counterpart signature page to this Agreement (each a “Party” and collectively the “Parties”).

#### **RECITALS**

- A. The parties wish to work together to create a Charter and associated documentation relating to an open architecture for authentication solutions for submission to a standards organization (the “Project”).
- B. To facilitate the development of a Charter and associated documentation the parties desire to grant the license set forth herein and to make copies of such Charter and associated documentation available to standards organizations such as Oasis-Open.

#### **AGREEMENT**

**NOW THEREFORE**, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree to the following:

### **1. Definitions**

In addition to the terms defined elsewhere in this Agreement, the following terms, when used herein, shall have the following meanings:

- a. “Affiliate” is an entity that directly or indirectly controls, is controlled by or is under common control with, a Party. Control for the purposes of this Agreement shall mean direct or indirect beneficial ownership of more than fifty percent of the voting stock, or decision-making authority in the event that there is no voting stock, in an entity.
- b. “Charter and associated documentation” means a set of documents describing high level requirements that would be submitted to a standards body by the Initiative for Open Authentication (“OATH”) with a request to undertake standards development work. The Charter and associated documentation will not contain any software code.
- c. “Contribution” is material, text, and modifications to other Contributions, in a tangible form of expression (including in electronic media) which is provided by a Party in the process of developing a Charter and associated documentation.

### **2. Obligations with Respect to the Charter and Associated Documentation**

- a. Drafting and Review of Charter and Associated Documentation Among the Parties.
  - (1) The Parties agree that they shall reasonably cooperate to develop a Charter and associated documentation related to an open architecture for authentication solutions for the purpose of submitting such materials to third parties such as a standards body. Each Party shall be free to use any efforts or no efforts in the course of working to develop such materials.
  - (2) Each Party agrees that the Charter and associated documentation developed under this Agreement will not incorporate any software code.
- b. Submissions to Standards Bodies

The Parties agree that prior to the joint submission of any Charter and associated documentation to standards setting organizations in the names of the Parties, a majority

of the Parties shall agree in writing on the materials to be submitted, the terms of such submissions, and the organization(s) to be involved. Notwithstanding the foregoing, any Party contributing to the Charter and associated documentation may circulate such Contributions to third parties without prior approval of the other Parties. Parties who do not consent to publication and distribution pursuant to section 6(d) may have all references to their names removed from the Charter and associated documentation by providing a prompt written demand of removal to the other Parties.

### **3. Licenses, Ownership and Attribution.**

a. Copyright Ownership. The Parties agree that, notwithstanding the retention by each Party of its ownership interest in its Contributions, the Parties shall jointly own the copyright in any Charter and associated documentation, without obligation of accounting.

b. Copyrights. Each Party, on behalf of itself and its Affiliates, hereby grants to the other Parties and their Affiliates an irrevocable, worldwide, perpetual, royalty-free, nontransferable, nonexclusive copyright license to reproduce, modify and distribute (in any and all print, electronic or other means of reproduction, storage or transmission) its Contributions and derivative works thereof created in the performance of this Agreement for purposes of developing and publishing a Charter and associated documentation.

c. Copyright Enforcement. One or more of the Parties (“Enforcing Party”) may enforce the joint copyright interest in the Charter and associated documentation with the express written consent of the other Parties. Each of the other Parties shall take such actions as it deems appropriate, consistent with the terms of this Agreement, to reasonably cooperate with the Enforcing Party in its efforts to enforce such joint copyright interest. Should such cooperation result in substantial costs to any cooperating Party, the Enforcing Party agrees to reimburse such cooperating Party for reasonable expenses, including, but not limited to, attorney’s fees, associated with such cooperation. For the avoidance of doubt, no Party shall have the right to enforce a copyright it does not own and no Party shall be required to participate as an Enforcing Party in an action to enforce the joint copyright interest. Nothing in the foregoing shall restrict the rights of any Party to enforce its copyright interests in any of its Contributions to the Project.

d. Ownership. Each Party shall retain ownership (including, but not limited to, the right to publish or distribute without any obligation of confidentiality, notwithstanding any terms of this Agreement to the contrary) of its respective Contributions to the Project.

e. Attribution. The Parties shall include the following copyright notice on all copies of the Charter and associated documentation, or such other additional attribution as the Parties may agree:

© Copyright [Insert year] by [Insert names of Parties and third parties who contributed copyrightable material]. All rights reserved.

The Parties understand and acknowledge that derivative works of the Charter and associated documentation may also contain copyright notices of other licensors of copyrighted or copyrightable works. Publicity surrounding the Charter and associated documentation shall be governed by Section 9p of this Agreement. Each Party shall use reasonable efforts to avoid publicly implying that another Party publicly endorses a Charter unless the Party affirmatively authorizes such statements in writing in advance.

f. No Patent Licenses. Nothing in this Agreement expressly or implicitly grants any licenses under any patents or patent applications of any Party.

#### **4. Representations and Disclaimer.**

a. Representation. Except as otherwise disclosed in writing by such Party at the time it makes a Contribution, each Party represents and warrants at the time of any such Contribution by it that, to the best knowledge of the employee actually making the Contribution, making the Contribution subject to the terms of this Agreement does not violate the copyright or trade secret interests of another.

b. Disclaimer of Warranties. THE PARTIES DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO

(1) EXCEPT AS SET FORTH IN SECTION 4(A), ANY WARRANTY OF TITLE OR THAT ANY CONTRIBUTION DOES NOT INFRINGE THE INTELLECTUAL PROPERTY RIGHTS OF ANY OTHER PERSON OR ENTITY AND (2) ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALL CONTRIBUTIONS ARE PROVIDED "AS IS."

#### **5. Term and Termination.**

a. Term. The term of this Agreement shall commence on the Effective Date hereof and shall expire two (2) years thereafter, unless sooner terminated by mutual consent of the parties or in accordance herewith.

b. Termination for Cause. A Party's participation in this Agreement may be terminated upon unanimous agreement of the other Parties at any time if (a) a receiver is appointed for the Party or its property, (b) the Party makes an assignment for the benefit of its creditors, (c) proceedings are commenced by or for the Party under any bankruptcy, insolvency, or debtor's relief law, (d) the Party liquidates or dissolves or attempts to do so, (e) the Party assigns or purports to assign this Agreement in breach of its provisions, or (f) the Party commits any other breach of a material obligation hereunder which it fails to cure within 30 days of written notice or which is by its nature incurable.

c. Termination for Convenience. Any Party may terminate its participation in this Agreement without cause upon written notice to the remaining parties. The effective date of such Party's termination of its participation will be the date on which the notice is sent.

d. Effect of Expiration, Termination and Withdrawal. Termination of a Party's participation in this Agreement shall not affect the existence or enforceability of this Agreement as to the remaining Parties, except that any termination, which leaves just one Party, terminates this Agreement in its entirety. In the event of expiration or termination of a Party's participation in this Agreement or of this Agreement in its entirety, Sections 1, 3, 4, 6, 7, 8, and 9 shall survive; provided, however, that a terminated Party's rights under Sections 3a through 3e shall only apply to the Charter and associated documentation that were adopted before the effective date of expiration or termination of such Party's participation in this Agreement.

#### **6. Confidentiality.**

a. Obligation. Each Party agrees that it will maintain all Confidential Information in confidence with at least the same degree of care that it uses to protect its own confidential material and in no event with less than reasonable care. Information shall be considered Confidential Information when (i) tangible disclosures are labeled as "confidential" or have a similar legend indicating the proprietary nature of the disclosure and (ii) non-tangible disclosures are identified as confidential prior to disclosure and reduced to writing, marked as provided above, and delivered to the receiving Party within thirty (30) days of the original date of disclosure. Each

Party making copies of any Confidential Information shall retain the “confidential” or similar legend affixed thereto. Unless the disclosing and receiving Parties agree otherwise, this obligation of confidentiality will expire three (3) years from the Effective Date. The obligations to retain information in confidence will not apply to information that:

- a. is already in the possession of the receiving Party or any of its subsidiaries without obligation of confidence;
- b. is independently developed by the receiving Party or any of its subsidiaries;
- c. is or becomes publicly available without breach of this Agreement;
- d. is rightfully received by the receiving Party or any of its subsidiaries from a third party without any obligation of confidence; or
- e. is released for disclosure with the disclosing Party’s consent.

The Parties agree that the existence of this Agreement and the fact that they are working together in accordance herewith shall be considered Confidential Information.

b. Disclosure. Each Party agrees that it will not, nor will it assist or allow any third party to, disclose any Confidential Information except to the Party’s employees and Affiliates, and contractors who have signed a confidentiality agreement with terms at least as restrictive as those set forth in this Agreement. Notwithstanding the foregoing, a Party may disclose Confidential Information (a) with the prior written consent of the disclosing Party; (b) as otherwise may be required by law or legal process, including to legal and financial advisors in their capacity of advising a Party in such matters; (c) during the course of litigation, so long as the disclosure of such terms and conditions are restricted in the same manner as is the confidential information of other litigating Parties; or (d) in confidence to its legal counsel, accountants, banks and financing sources and their advisors solely in connection with applicable laws and regulations governing regulated businesses or issuance of securities to the public; provided that, in (b) through (d) above, (i) the receiving Party shall use all reasonable legitimate and legal means available to minimize the disclosure to third parties, including without limitation seeking a confidential treatment request or protective order whenever appropriate or available; and (ii) the receiving Party shall provide the disclosing Party with at least ten (10) days prior written notice of such disclosure.

c. Residuals and Independent Development. The terms of this Section 6 shall not be construed to limit any Party’s right to independently develop or acquire products.

Further, each Party shall be free to use and disclose for any purpose the residuals resulting from access to or work with such Confidential Information. The term “residuals” means any information retained in the unaided memories of the receiving Party’s employees who have accessed and used the disclosing Party’s Confidential Information pursuant to the terms of this Agreement. An employee’s memory is unaided if the employee has not intentionally memorized the Confidential Information for the purpose of retaining and subsequently using or disclosing it in violation of this Agreement. The Parties shall have no obligation to limit or restrict the assignment of such persons or to pay royalties for any work resulting from the use of residuals. However, the foregoing shall not be deemed to grant to any Party a license under another Party’s copyrights or patents.

d. Special Considerations for a Charter and Associated Documentation. No Party shall publish or distribute the Charter and associated documentation to third parties without the consent of a majority of the other Parties, except with respect to a Party’s contributions as provided in section 2.b. Notwithstanding the foregoing, and regardless of whether the Charter and associated documentation are marked as “confidential”, each Party is free to implement or incorporate the contents of any materials contained in the Charter or associated

documentation in any of its products subject to the license terms agreed to pursuant to Section 3.b, and the marketing, sale or distribution of such products shall not be a violation of the confidentiality obligations herein. In addition, a published Charter and associated documentation shall not be considered to be Confidential Information.

1 **Limitation of Liability.** In no event shall any Party be liable to any other Party or to any third party for direct, exemplary, incidental, indirect, special, punitive or consequential damages of any kind, including without limitation loss of profit, savings or revenue, or the claims of third parties, whether or not advised of the possibility of such loss, however caused and on any theory of liability, arising out of this Agreement.

**8. Infringement.**

a. **Notification of Infringement.** Each Party shall use reasonable efforts to notify the other Parties of any suits or credible threats of litigation against such Party related to its Contributions or to the Charter and associated documentation, which may come to the attention of the Party's employee participating in OATH.

b. **Enforcement of Rights.** Each Party, at its sole expense, shall have the right to determine the appropriate course of action to enforce its rights in its Contributions or otherwise abate the infringement thereof, to take (or refrain from taking) appropriate action to enforce its Contributions, to control any litigation or other enforcement action and to enter into, or permit, the settlement of any such litigation or other enforcement action with respect to its Contributions.

**9. General.**

a. **Action by the Parties.** Unless specifically stated otherwise, the "agreement" of the Parties needed to approve or take any action under this Agreement is satisfied by the approval of a majority of the Parties. Notwithstanding a Party's objection to any action or agreement under this Agreement, unless such Party terminates its participation pursuant to Section 5 prior to such action or agreement, such objection shall have no effect on such Party's rights and obligations under this Agreement.

b. **Waiver.** The failure of any Party to enforce any of the terms and conditions of this Agreement shall not constitute a waiver of that Party's right thereafter to enforce each and every term and condition of this Agreement or upon reasonable notice to require correction of a default previously waived.

c. **Severability.** Should one or more provisions of this Agreement be or become invalid, the Parties shall substitute, by consent of a majority of the Parties, valid provisions for such invalid provisions which valid provisions in their economic effect are sufficiently similar to the invalid provisions that it can be reasonably assumed that the parties would have entered into this Agreement with such provisions. In case such provisions cannot be agreed upon, the invalidity of one or several provisions of this Agreement shall not affect the validity of this Agreement as a whole, unless the invalid provisions are of such essential importance to this Agreement that it can be reasonably assumed that the parties would not have entered into this Agreement without the invalid provisions.

d. **Regulatory Intent.** The Parties acknowledge that they compete with one another 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. Each Party may have similar agreements with others. Each Party may design, develop, manufacture, acquire or market competitive specifications, products and services, and conduct its business in whatever way it chooses. No Party is obligated to announce or market any products or services. Without limiting the generality of the foregoing, the Parties agree not to have any discussion relating to product pricing, methods or channels of product distribution, any division of markets, or allocation of customers or any other topic, which should not be discussed among competitors. Accordingly, each Party hereby assumes responsibility to provide appropriate legal counsel to its representatives regarding the importance of limiting their discussions to subjects that relate to the purposes of the project, whether or not such discussions take place during formal meetings, informal gatherings, or otherwise.

e. **Governing Law.** This Agreement shall be governed by and interpreted in accordance

with laws of the State of New York, excluding its choice of law rules.

f. Headings. The Parties acknowledge that the headings to the sections hereof are for reference purposes only and shall not be used in the interpretation of this Agreement.

g. Assignment. No Party shall assign its rights or obligations under this Agreement without the prior written consent of the other Parties. For purposes of this Agreement, an assignment shall not be deemed to include a transfer or sale of all or substantially all of the business of a Party, or a merger, consolidation or other transaction that results in a change in control of the Party. Any purported assignment in violation of this Section 9g shall be void.

h. Notices. All notices permitted or required under this Agreement shall be in writing and shall be delivered to each Party as follows with notice deemed given as indicated:

(a) by personal delivery when delivered personally; (b) by overnight courier upon written notification of receipt; or (c) by certified or registered mail, return receipt requested, five (5) days after deposit in the mail. All notices must be sent to the following address, and to such other addresses that the receiving Parties may have provided for the purpose of notice in accordance with this Section:

If to OATH: The notice address on the front of this Agreement  
ATTN: Donald E. Malloy, Jr.,  
telephone 408-224-8000, fax 408-457-7632

OATH agrees to maintain a list of Parties and their respective designated participants and addresses for the purpose of receiving notices, together with copies of all executed counterparts to this Agreement. At any time upon request of a Party, OATH promptly will provide a copy of such list together with a copy of all executed counterparts to this Agreement to the requesting Party.

i. Force Majeure. No Party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder (except confidentiality obligations) on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, governmental action, labor conditions, earthquakes or any other cause which is beyond the reasonable control of such Party.

j. Construction of Agreement. This Agreement shall not be construed for or against any Party based on any rule of construction concerning who prepared this Agreement or otherwise.

k. General Construction. As used in this Agreement, the plural form and singular form each shall be deemed to include the other in all cases where such form would apply. "Includes" and "including" are not limiting, and "or" is not exclusive.

l. Amendments. No change, modification, extension, termination or waiver of this Agreement, or any of the provisions herein contained, shall be valid unless made in writing and signed by duly authorized representatives of a majority of the Parties hereto. Notwithstanding, a Party may change its designated participant at any time upon notice to the other Parties.

m. Entire Agreement. This Agreement sets forth the entire agreement of the Parties with respect to its subject matter, and supersedes all prior agreements, commitments, or representations of any kind, oral or written with respect thereto. There are no representations, agreements, arrangements or understandings, oral or written, between the parties hereto relating to the subject matter of this Agreement that are not fully expressed herein.

n. Independent Contractors. The relationship of the Parties established by this Agreement is that of independent contractors. This Agreement does not give any Party the power to direct and control the day to day activities of another, constitute the Parties as partners, joint venturers, co-owners,

principal-agent, or otherwise participants in a joint or common undertaking, or allow any Party to create or assume any obligation on behalf of another Party for any purpose whatsoever.

o. Import and Export Controls. In connection with this Agreement, the Parties shall comply with all applicable laws, including export, re-export and foreign policy controls and restrictions that may be imposed by any government.

p. Publicity. No Party shall use the name of another Party in any public announcement relating to this Agreement without the prior written consent of such named Party.

q. Counterparts. This Agreement may be signed in one or more counterparts, each of which will be considered an original, but all of which together form one and the same instrument. Once signed, all Parties agree that any reproduction of this Agreement made by reliable means (for example, photocopy or facsimile) shall be considered an original unless prohibited by law.

**IN WITNESS WHEREOF**, the duly authorized representatives of the Parties have executed this Agreement.

Initiative for Open Authentication/OATH

By: Name: Donald E. Malloy, Jr.  
Title: Chairman, Membership

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

### **A MULTI-PARTY AGREEMENT**

#### **Counterpart Signature Page**

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

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

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

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

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

\_\_\_\_\_