

ONF Continuous Certification Program Agreement 2020

This ONF Certification Program Agreement (“Agreement”) is entered into by and between Open Networking Foundation (“ONF”) and the ONF Member company (“Member”) set forth in the signature line below and its Affiliates (as defined below) (collectively referred to as the “Participant”) and effective as of the day on which the latter of the Parties’ signature has been executed (the “Effective Date”). ONF and Participant may at times be referred to in this Agreement individually as a “Party” and collectively as the “Parties.”

A. WHEREAS, ONF is a nonprofit corporation formed as provided by its Bylaws, which has established a product Continuous Certification Program (“CC Program” or “Program”); and the terms of participation in the product certification program are defined below;

B. WHEREAS, Participant wishes to enter one or more of Participant’s Products into the Program, and Participant’s Product will be tested on an ongoing basis to determine compatibility with a particular ONF exemplar platform software project;

C. WHEREAS, ONF has developed the certification mark(s) which it will provide to participants in the product certification program and which it will attach to this Agreement or will incorporate by reference such mark(s) (the “Mark(s)”);

D. WHEREAS, ONF is willing to license use of the Mark(s) to Participant for products that have been provided to ONF for use in the certification lab and that have successfully met the requirements of the ONF product certification program as defined and updated from time to time by each Project’s Technical Steering Team (“TST”); and

E. WHEREAS, one or more of Participant’s Products (as identified in an exhibit or attachment to this Agreement) have (or is expected to) successfully met the ONF Certification Requirements (collectively, the “Certified Product”), and ONF wishes to grant Participant a limited license to use the Mark(s) in connection with the Certified Products, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals (which are incorporated into and made a part of this Agreement by this reference), the other covenants and conditions of this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

ONF Continuous Certification Program Participation

Company participating in the ONF’s Continuous Certification Program will be subject to the following terms of participation and ONF will operate the Continuous Certification Program in accordance with the following terms:

1. Program Overview
 - 1.1. ONF offers a product certification program to certify Product(s) with a specific ONF exemplar platform software project (“Project”). Product(s) will be submitted for

verification with the most recent version of a specific Project and will be installed in an ongoing regression testbed to enable continuous verification with the master branch of the Project.

2. Participation

2.1. Companies must be an ONF member (or an Affiliate of an ONF member) in order to participate in the program.

2.1.1. A copy of this Agreement or an addendum to this Agreement must be submitted with each individual product to be certified.

2.1.2. If Participant wishes to certify a specific Product against more than one ONF Project, separate versions of this agreement (or appendices to this agreement) must be submitted.

2.2. Product submissions that are accepted and entered into the Program (each a "Product") will be tested and verified to work with a particular Project.

2.2.1. If a submitted Product has been verified against the Project and otherwise meets the ONF Certification Requirements, it will be certified and added to the ongoing CI/CD verification program to ensure that the Product remains conformant with the Project and each subsequent release as long as it remains active in the regression testing system.

2.2.2. Certified Products will be publicly identified as certified with the associated ONF Project on the ONF marketplace website, ONF project webpage, project Wiki, and featured in promotion activities on ONF marketing channels.

2.2.3. Participant Company will receive certification certificate(s) and will be allowed to use ONF CC Program logos in association with certified product(s).

2.2.4. The submitted Products will remain in the testing location indefinitely and will continue to be certified against new releases until removed from Program (see Section 4).

2.3. Participants will be required to integrate and test their Product with the desired Project PRIOR to submission to ONF for certification. Although ONF may provide guidance and direction, ONF shall not be responsible for making Project or Product modifications in order to bring the Product into conformance with the Project.

2.4. In the event of failure of the Product to pass certification, ONF will provide results to Participant for troubleshooting and resubmission.

2.4.1. Up to two retests will be conducted at no additional cost to Participant.

2.4.2. After the first two complimentary retests, Participant will be required to pay 50% of initial fee for each additional retest.

3. Fee Structure

3.1. Companies must be ONF members in good standing in order to participate.

3.1.1. There is a one-time \$20,000 initial fee for each Product accepted into this Program and the CI/CD/CC pipeline and testbed.

3.1.2. Additionally, thereafter on each annual anniversary a \$5,000 fee applies per Product (billed 365 days from first submission) to keep Product in the CI/CD testbed.

3.2. Participants in the tiers of ONF membership listed below will receive annual credits that can be used to offset the fees of participating in this Program:

3.2.1. ONF Partner Members will receive one (1) \$50,000 credit annually.

3.2.2. ONF Members at the \$50,000 membership level will receive one (1) \$20,000 credit annually.

3.2.3. ONF Members at the \$40,000 membership level will receive one (1) \$10,000 credit annually.

3.2.4. ONF Members at the \$30,000 membership level will receive one (1) \$5,000 credit annually.

3.2.5. ONF Members at the \$20,000 membership level will receive one (1) \$2,500 credit annually.

3.2.6. ONF Members at the \$10,000 membership level will receive one (1) \$1,250 credit annually.

3.3. Annual credit will be awarded at the time of first product submission and refreshed every 365 days thereafter as long as the Participant maintains their membership in good standing. Credit does not roll over and must be used within 365 days from award date.

3.4. All program fees will be invoiced NET 30.

3.5. Both the program fees and the annual program credit based on membership tier may be adjusted in the future at the sole discretion of the ONF.

4. Termination

4.1. If ONF membership is terminated, all of Participant's Certified Product(s) will be removed from the Program.

4.2. All fees are nonrefundable.

4.3. Participant is responsible for all associated fees for shipping product to ONF, at the designated address for testing. ONF will cover all standard shipping fees for returning Product to Participant upon termination.

4.4. Any termination of participation in the ONF continuous certification program may be submitted in writing at any time, however it must be submitted at least 30 days prior to imposition of any annual fees to avoid liability of said fees.

5. Effect of Termination

5.1. Upon the effective date of termination of this Agreement (the "Termination Date"), the License granted under this Agreement shall immediately and automatically terminate. Upon the Termination Date, Participant shall: (i) immediately cease all use of the Mark(s) in connection with the Certified Product and all advertising and promotional material, packaging, and other documents and materials related to the Certified Product; (ii) immediately terminate all current sublicenses for use of the Mark(s) granted under Section 13.2 of this Agreement to Participant Contractors; and (iii) immediately cease all other uses of the Mark(s).

Terms for Participant Equipment Submitted for Certification Testing

6. Participant Acknowledgement and Grant of Product Usage

Participant hereby agrees to provide to ONF the Product described in the attachment hereto, and that such Product will be treated as loaner equipment ("Loaner Equipment"). Participant acknowledges that the Loaner Equipment will be assembled in a multi-vendor working POD used for active regression testing. Loaner Equipment will be provided to ONF for the purpose of allowing ONF to perform tests in connection with its Continuous Certification Program (the "Authorized Use").

7. Ownership and License of Loaner Equipment

Participant retains title to all Loaner Equipment. ONF may not transfer Loaner Equipment to any other party. To the extent Loaner Equipment contain internal software code ("Code"), so identified by Participant, Participant grants ONF a license only to execute such Code to enable the Loaner Equipment to operate as formatted or configured. ONF may not reverse assemble, reverse compile, decode, translate, or make any other copies of the Code.

8. Service and Support

Participant will use reasonable efforts to provide or arrange for service and support to cause the Loaner Equipment to operate in accordance with applicable published specifications or otherwise as intended. Such service and support will be without charge.

9. Return to Participant

Upon termination of this Agreement, termination of Participant's ONF membership or termination of Participant's enrollment in the ONF Continuous Certification Program, ONF will return the Loaner Equipment to Participant or its designated agent. If necessary in connection with the Loaner Equipment, ONF will permit Participant's personnel access during ONF's normal business hours to allow Participant to remove the Loaner Equipment. When a Participant requests return of Loaner Equipment, it may take some time for ONF to make accommodations such that all other equipment in the POD can continue to be tested. As such, ONF will endeavor to return the Loaner Equipment within 60 days, but the timeliness of such returns cannot be guaranteed by ONF.

10. Disclaimer of Warranty; Disclaimer of Marks

ONF PROVIDES NO WARRANTY RELATED TO THE TESTING PROGRAM AND ANY DAMAGE THAT MAY BE CAUSED TO LOANER EQUIPMENT. ONF MAKES NO REPRESENTATIONS OR WARRANTIES THAT (AND ONF DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES THAT) CERTIFIED PRODUCTS MEET THE REQUIREMENTS OF THE PRODUCT CERTIFICATION PROGRAM, OR THAT THE USE OF A CERTIFIED PRODUCT WILL BE FIT FOR ITS INTENDED PURPOSE OR WILL BE ERROR FREE, SAFE, ACCURATE, RELIABLE, OR UNINTERRUPTED. ONF SHALL HAVE NO RESPONSIBILITY OR LIABILITY TO ANY LICENSEE CONTRACTOR OR ANY DISTRIBUTOR, RETAILER, WHOLESALER, MARKETER, PROMOTER, CONSUMER, END USER, OR OTHER USER OR DISTRIBUTOR OF PARTICIPANT'S CERTIFIED PRODUCTS.

THE MARK(S) IS(ARE) PROVIDED "AS-IS" AND WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF TITLE OR NON-INFRINGEMENT OR OF THE VALIDITY OF ONF'S RIGHTS IN THE MARKS, IN ANY COUNTRY; AND ONF DISCLAIMS ANY AND ALL SUCH WARRANTIES AND ALL OTHER WARRANTIES THAT MIGHT OTHERWISE BE IMPLIED BY APPLICABLE LAW. ONF SHALL HAVE NO LIABILITY TO PARTICIPANT WHATSOEVER FOR ANY INTELLECTUAL PROPERTY INFRINGEMENT CLAIM BASED ON PARTICIPANT'S AND/OR A PARTICIPANT CONTRACTOR'S MANUFACTURE, SALE, OR DISTRIBUTION OF CERTIFIED PRODUCT OR USE OF THE MARK(S).

11. Limitation of Liability

PARTICIPANT EXPRESSLY UNDERSTANDS AND AGREES THAT ONF, ITS SUBSIDIARIES AND AFFILIATES SHALL NOT BE LIABLE TO PARTICIPANT OR ITS AFFILIATES UNDER ANY THEORY OF LIABILITY FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES THAT MAY BE INCURRED BY PARTICIPANT OR ITS AFFILIATES, WHETHER OR NOT ONF OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF ANY SUCH LOSSES ARISING. IN NO EVENT WILL ONF'S AGGREGATE LIABILITY FOR DAMAGES ARISING OUT OF THIS AGREEMENT OR THE TERMS EXCEED THE GREATER OF AMOUNTS PAID BY PARTICIPANT TO ONF OVER THE PRIOR THIRTY-SIX (36) MONTHS TO HAVE THE PARTICIPANT PRODUCTS CERTIFIED IN THE CONTINUOUS CERTIFICATION PROGRAM.

12. Indemnification

To the maximum extent permitted by law, Participant agrees to defend, indemnify and hold harmless ONF, its affiliates and their respective directors, officers, employees and agents from and against any and all claims, actions, suits or proceedings, as well as any and all losses, liabilities, damages, costs and expenses (including reasonable attorneys' fees) arising out of or accruing from (a) the inaccuracy or violation of any of Participant's representations, warranties, undertakings, or covenants contained in this Agreement, (b) Participant's or its Affiliate's use of one or more of the Marks not in accordance with the terms of this Agreement and/or the ONF Logo Usage Guidelines (including without limitation any use of the Marks by sublicensees), (c) Participant's Certified Product and/or any third party's use thereof, and (d) any non-compliance by Participant with this Agreement or any applicable law or regulation.

License to ONF Marks for Certified Products

13. Mark License Grant; Restrictions

13.1 License Grant. Subject to and conditioned upon Participant's compliance with this Agreement and Product successfully passing at least one round of certification tests, ONF hereby grants to Participant, and Participant accepts, a limited, worldwide, non-exclusive, non-sublicensable (except as set forth in Section 13.2 of this Agreement), non-assignable (except as set forth in Section 16 of this Agreement), non-transferable, revocable, license to use the Mark(s): (i) on Participant's Certified Product; (ii) on packaging and marketing materials directly

related to the Certified Product; and (iii) on any portion of Participant's website that is directly related to the Certified Product (the "License"). Participant may use the Mark(s) solely during the term of this Agreement, solely in accordance with the terms and conditions of this Agreement and the ONF Logo Usage Guidelines. No other right, title, or license to any of ONF marks is granted under this Agreement.

13.2 Sub-License Grant. Notwithstanding the non-sublicensable nature of the License granted to Participant under Section 13.1 of this Agreement, Participant may allow third parties with whom Member has contracted to manufacture or assemble Certified Products under Participant's trade name and/or to sell, distribute, advertise, promote, or market Participant's Certified Product(s) (collectively, "Participant Contractor(s)") to use the Mark(s) solely on Participant's behalf, solely in connection with manufacturing, assembling, selling, distributing, advertising, promoting, and/or marketing Participant's Certified Products for Participant's benefit, and solely in accordance with the terms and conditions of this Agreement and the ONF Logo Usage Guidelines.

13.3 No Challenge of Ownership Interests. Participant acknowledges ONF's exclusive ownership rights in and to the Mark(s) and all goodwill associated therewith. Participant acknowledges that any and all use of the Mark(s) inures to the sole benefit of ONF. Participant shall not challenge ONF's exclusive ownership rights in and to the Mark(s), nor take action inconsistent with ONF's rights in the Mark(s). Participant shall not adopt, use, apply to register, and/or register as its own trademark(s), service mark(s), certification mark(s), domain name(s), corporate or entity name, or the like, any word(s), phrase(s), or design(s) confusingly similar to or that dilute(s) the Mark(s), for any product and/or service for which the Mark(s) is/are registered, applied for, and/or used. If, at any time, Participant acquires any rights in, or registration(s) or application(s) for, the Mark(s), whether by operation of law or otherwise, Participant hereby immediately and automatically, and at no expense to ONF, assigns such rights, registrations, and/or applications to ONF, along with any and all associated goodwill.

13.4 ONF Control of Marks. ONF shall have absolute determination and control, in its sole discretion, over the design, redesign, modifications, derivatives, authorized or unauthorized uses, and manner and extent of worldwide registration, maintenance, protection, enforcement, ownership, and licensing of the Mark(s).

13.5 Compliance with Laws. Participant covenants, represents, and warrants that it will comply with all applicable laws and regulations regarding the advertising, promotion, display, and use of the Mark(s).

14. Notification of Unauthorized Use/Infringement

In the event Participant: (i) becomes aware of any unauthorized use of one or more of the Marks by a third party; or (ii) has an objectively reasonable belief that the use of one or more of the Marks by a third-party licensee does not comply with this Agreement and the ONF Logo Usage Guidelines, Participant shall use reasonable efforts to promptly notify ONF in writing. The right to enforce ONF's rights in the Mark(s) rests entirely with ONF and shall be exercised in

ONF's sole discretion. ONF shall be entitled to any monetary recovery by way of settlement or judgment. Participant shall not commence any action or claim to enforce ONF's rights in the Mark(s), other than the above-required notification.

Miscellaneous Terms

15. Definitions

15.1 "Bylaws" means ONF's Bylaws as may be amended from time to time by ONF.

15.2 All other capitalized terms used in this Agreement that are not defined shall have the meanings applied to such terms in this Agreement or in the Bylaws.

16. No Assignment

Participant may not assign this Agreement without the prior written consent of ONF, which consent shall not be unreasonably withheld.

17. Governing Law; Venue

This Agreement is governed by the laws of the State of Delaware, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Agreement. Any action or proceeding arising out of this Agreement will be litigated in courts located in the County of San Mateo, State of California. Each party consents and submits to the jurisdiction of any local, state, or federal court located in the State of California.

18. Equitable Relief; Cumulative Remedies

Participant acknowledges that the breach or other violation of any of its covenants, representations, warranties, or other terms or conditions in this Agreement might cause ONF irreparable damage that cannot be readily remedied by monetary damages in an action at law. In the event of any breach or other violation by Participant, including any action by Participant that could cause some loss or dilution of ONF's goodwill, reputation, or rights in the Mark(s), ONF shall be entitled, in addition to any and all other remedies available at law and in equity, to an immediate temporary, preliminary, and/or permanent injunction (without posting a bond or other security and without proving damages) to stop or prevent such irreparable harm, loss, or dilution.

19. Attorneys' Fees

The Parties agree that the prevailing Party in any action for enforcement, interpretation, or breach of or default under any provision of this Agreement shall be entitled to recover its reasonable attorneys' fees and costs.

20. Severability

The provisions of this Agreement are independent of each other. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity of the remaining provisions, and the invalid or unenforceable provision will be deemed removed from this Agreement.

21. Survival

Sections 5, 9-14, 16, and 17-24 will survive termination of this Agreement.

22. Modifications

This Agreement will not be amended or modified except in a writing signed by both Parties.

23. Relationship of the Parties

No agency, partnership, joint venture, franchise, or employment is created between the Parties as a result of this Agreement. Neither Party is authorized to create any obligation, express or implied, on behalf of the other Party.

24. Binding Effect

This Agreement will be binding upon and inure to the benefit of the undersigned, any and all Affiliates of Participant, and any permitted successors and/or assigns of either Party.

25. Entire Agreement

This Agreement contains the entire understanding of the parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of this Agreement.

26. Signatures

This Agreement may be signed in counterparts. An email transmission of a signature page will be considered an original signature page. At the request of either Party, the other Party will confirm the email-transmitted signature page by delivering the original signature page to the requesting Party.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have caused this Agreement to be executed by their respective duly authorized agents, effective as of the Effective Date.

ONF
Open Networking Foundation

PARTICIPANT
(ON BEHALF OF ITSELF AND AFFILIATES)

By: _____

By: _____

(Authorized Signatory)

(Authorized Signatory)

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____




Date: _____

Participant Information

Company Name:	
Billing Address:	
Primary Contact:	
Primary Contact Title:	
Primary Email:	
Primary Phone Number:	
Secondary Contact:	
Secondary Contact Title:	
Secondary Email:	
Secondary Phone Number:	
Billing Contact (if different):	
Billing Contact Title:	
Billing Email:	
Billing Phone Number:	

Product Information

Check one box below, indicating the ONF Project and type of Product(s) being submitted for certification:

ONF Project	Server	Switch	Smallcell	OLT	ONU
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
		<input type="checkbox"/>			

Product Details (to be listed on Marketplace Website once Product is Certified)

(Please complete for each product to be submitted)

Description of Product:	
Part Number:	
List Price (optional – will be listed on marketplace website if provided):	
Product Image URL: (may also add as attachment)	
Point of Contact (to be listed on the ONF Marketplace website once the product passes certification. This should be where end users should be directed if they are interested in learning more about your product):	Website: Email: Phone:

If Known, Specifics of the Unit to be Provided for Testing

(Please complete for each product to be submitted)

Description of Product:	
Product SKU:	
Serial Number:	
Date to be shipped to ONF:	
ONF destination shipping address (where product will be shipped to enter Program):	
Return Address (where product should be shipped if/when returned to Participant):	