



# Membership Agreement

Last Updated: June 2016

**This Membership Agreement** (the “**Agreement**”) is made between the Anti-Malware Testing Standards Organization, Inc., a California nonprofit mutual benefit corporation (“**AMTSO**”) and you as an individual or entity that is applying for membership with AMTSO and shall be effective on the date your membership application is accepted by AMTSO (the “**Effective Date**”).

AMTSO Membership is divided among two classes: “**Entity Members**”, which include all corporations, non-profit organizations, academic institutions and other entities; and “**Individual Members**”, which include all students, academics and other individuals. Entity Members and Individual Members of AMTSO are collectively referred to in this agreement as “**AMTSO Members**” and the “**Membership at Large**”.

**Whereas**, the purpose of AMTSO is to improve business conditions related to the development, use, testing and rating of anti-malware solutions;

**Whereas**, the Board of Directors of AMTSO (the “**Board**”) has adopted bylaws calling for the creation of AMTSO “**Membership**”, and setting forth a governance structure (the “**Bylaws**”);

**Whereas**, Member desires to become a member of AMTSO;

**Now, therefore**, AMTSO agrees to admit Member on the terms and consideration contained herein, and Member agrees to abide by the terms and conditions contained herein:

## 1. MEMBERSHIP AND VOTING

AMTSO Members shall publicly, but non-exclusively, support the “**Purposes**” (as stated in the Bylaws), though not necessarily each action, of AMTSO, and shall agree to abide by the obligations set forth in this Agreement, including the payment of membership fees set forth below. Entity Members shall be permitted to vote with the Membership at Large to the extent permitted by the Bylaws and applicable law. Individual Members shall not be permitted to vote with the Membership at Large, as set forth in the Bylaws.

## 2. MEMBERSHIP RIGHTS AND OBLIGATIONS

**2.1 Fees.** Member agrees to pay the “**Annual Fee**” as set forth herein, as may be amended from time to time in accordance with the Bylaws. Member agrees to abide by other terms relating to the payment of fees, as further specified in Section 2.3 herein. The current Annual Fee is determined by the annual revenue of each member, as follows (in US Dollars):

- **Business Entities:**
  - Less than \$10 million in annual revenue: \$3,000
  - \$10 million to \$100 million in annual revenue: \$7,500
  - \$100 million or more in annual revenue: \$10,000
- **Individuals:**
  - Standard: \$1000
  - Full-Time Academic: \$500
  - Full-Time Student in Relevant Area of Study: \$150, plus additional fees for meeting attendance
- **Academic Institutions and Non-Governmental Organizations:** \$1,500

The Annual Fee is subject to change and may decrease or increase from time to time at the discretion of the Board, which Member hereby acknowledges and agrees to. If any Member or potential Member is unable to pay such fee, petition may be made to the Board to wave or modify the fee. Members serving by invitation on the AMTSO Advisory Board shall not be required to pay the Annual Fee.

Membership fees shall accrue on July 1 of each year, and shall be due within 60 days of July 1. In general, membership fees will not be prorated or waived, unless a petition is made to the Board and such petition is granted, in the sole discretion of the Board. Your membership fee entitles you to membership for the period commencing the date your application is accepted through the next June 30. AMTSO will accept membership payment through credit cards or checks, and payment instructions will be provided to you prior to your payment becoming due. All membership fees are non-refundable and non-transferable.

**2.2 Compliance with Policies.** Member agrees to abide by, and shall have, all applicable rights and obligations of Members as set forth in the Agreement, the Bylaws and any and all policies and procedures adopted by AMTSO, as such may be amended from time to time in accordance with the Bylaws. In particular, Member agrees to abide by the AMTSO Intellectual Property Policy, Antitrust Policy, Code of Conduct and such other Policies and Guidelines that are generally applicable to the Members at Large, or Member in particular, as AMTSO may adopt from time to time.

**2.3 Costs and Expenses.** Each Member shall bear all of its own costs and expenses related to membership in AMTSO, including compensation payable to Member's employees and consultants that participate in AMTSO on behalf of Member, and all travel and other expenses associated with Member's participation in AMTSO meetings, conferences, and development projects. Except as otherwise set forth in this Agreement, the Bylaws or separately agreed to in writing by the Board, Member understands and agrees that Member has no rights of refund or reimbursement from AMTSO.

**2.4 Publicity.** Any Member may publicly announce such Member's membership in AMTSO or activities as a member of AMTSO. Unless otherwise required by law, any AMTSO or AMTSO Member press release concerning a comment made by any Member or specifically referencing any Member other than by general reference, shall be subject to that Member's prior written consent. Once approved, the press release statement and iterations of such statement may be used by AMTSO and other Members for the purpose of promoting such Member's interest in AMTSO, AMTSO, or any such purpose as is designated in the Member's consent, and may be reused for such purpose until such approval is withdrawn with reasonable prior written notice. Any use of a Member's name shall be subject to the applicable usage guidelines of that Member.

**2.5 Use of Name.** Members agree to comply with the then current (if any) AMTSO Trademark Usage Guidelines.

### **3. TERM AND TERMINATION**

**3.1 Term.** The term of this Agreement shall begin on the Effective Date and, except as provided below, shall terminate on July 1 of each year, upon which such membership may be renewed for an additional one (1) year period, upon payment of the applicable Membership Fees in effect at the time of such renewal, and under the terms of this Agreement, as it may be updated and amended from time to time.

**3.2 Termination.** Member may terminate its membership or be removed or suspended from membership in AMTSO in accordance with the Bylaws. Upon termination of Member's membership, this Membership Agreement shall terminate. As set forth in Section 2.3 above, Member shall not be entitled to any refund or reimbursement from AMTSO, including on termination.

**3.3 Survival.** In the event of termination of membership under Section 3.2, Section 4 shall survive and remain in effect. In addition, all intellectual property matters shall continue to be subject to the provisions of the IP Policy in effect during its membership. Member shall also be obligated to pay all costs, expenses and dues owed to AMTSO that accrued prior to the effective date of termination of its membership.

### **4. GENERAL**

**4.1 Authority to Execute Agreement.** Member hereby represents, warrants and covenants to AMTSO that (a) it has all necessary power and authority to enter into this Agreement and to perform its obligations hereunder; (b) the execution and performance of this Agreement does not and will not violate any agreement to which Member is a party or by which it is otherwise bound; and (c) when executed and delivered, this Agreement will constitute a legal, valid and binding obligation of Member, enforceable in accordance with its terms.

**4.2 No Other Licenses.** By executing this Agreement, Member neither grants nor receives, by implication, estoppel, or otherwise, any rights under any copyright, patents or other intellectual property rights of AMTSO or another Member.

**4.3 No Employment Relationship.** Nothing in this Agreement is intended to give rise to an employer-employee relationship, including the relationship between employees or contractors of Member organizations and AMTSO.

**4.4 No Warranty.** AMTSO AND MEMBER EACH ACKNOWLEDGES THAT, EXCEPT AS OTHERWISE AGREED IN WRITING, ALL INFORMATION PROVIDED TO OR BY AMTSO UNDER THIS AGREEMENT IS PROVIDED "AS IS" WITH NO WARRANTIES OR CONDITIONS WHATSOEVER, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND AMTSO AND MEMBER EACH EXPRESSLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY, NONINFRINGEMENT, AND FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO SUCH INFORMATION.

**4.5 Limitation of Liability.** IN NO EVENT WILL EITHER AMTSO OR MEMBER BE LIABLE TO EACH OTHER OR ANY OTHER MEMBER OR THIRD PARTY UNDER THIS AGREEMENT FOR THE COST OF PROCURING SUBSTITUTE GOODS OR SERVICES, LOST PROFITS, LOST REVENUE, LOST SALES, LOSS OF USE, LOSS OF DATA OR ANY INCIDENTAL, CONSEQUENTIAL, DIRECT, INDIRECT, PUNITIVE, OR SPECIAL DAMAGES,

WHETHER OR NOT SUCH PARTY HAD ADVANCE NOTICE OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES.

**4.6 Governing Law.** This Agreement shall be construed and controlled by the internal laws of the State of California without reference to conflict of laws or choice of law principles.

**4.7 Notices.** All notices or other communications to or upon AMTSO or any Member shall be delivered to or at the addresses provided in connection with the execution of this Membership Agreement, as may be updated from time to time by Member of AMTSO through email or other communication, including posting on the amtso.org website. For purposes of this Section, notice can include notice by written mail, electronic mail or by facsimile and shall be deemed served when sent. **BY AGREEMENT TO THESE TERMS, AND IN ACCORDANCE WITH THE ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT (15 U.S.C. SEC. 7001(C)(1)), MEMBER CONSENTS TO THE PROVISION OF ELECTRONIC COMMUNICATION FROM AND TO AMTSO, AND IS DULY INFORMED OF THEIR RIGHT TO HAVE THE COMMUNICATION PROVIDED OR MADE AVAILABLE IN NON-ELECTRONIC FORM WITHOUT ADDITIONAL FEES ON MEMBER'S WRITTEN REQUEST, AND THAT MEMBER MAY WITHDRAW THIS CONSENT FOR ELECTRONIC COMMUNICATIONS AT ANY TIME BY PROVIDING WRITTEN NOTIFICATION TO AMTSO AND MAY UPDATE INFORMATION NEEDED TO CONTACT MEMBER ELECTRONICALLY.**

**4.8 Complete Agreement; No Waiver.** Except with respect to the Bylaws, IP Policy, and any other policies and procedures that may be adopted by AMTSO from time to time in accordance with the Bylaws (all of which shall be binding on Member), this Agreement, including all attachments, sets forth the entire understanding of AMTSO and Member and supersedes all prior agreements and understandings relating hereto, unless otherwise stated in this Agreement. The waiver of any breach or default will not constitute a waiver of any other right hereunder or any subsequent breach or default.

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

**4.10 Compliance with Laws.** Anything contained in this Agreement to the contrary notwithstanding, the obligations of AMTSO and Member shall be subject to all laws, present and future, of any government having jurisdiction over AMTSO and Member including all export and re-export laws and regulations. It is the intention of AMTSO and Member that this Agreement and all referenced documents shall comply with all applicable laws and regulations.

**4.11 Headings.** AMTSO and Member acknowledge that the headings to the sections hereof are for reference purposes only and shall not be used in the interpretation of this Agreement.

**4.12 Assignment.** Member may not assign or transfer its membership in AMTSO nor assign, transfer or delegate its rights or obligations under this Agreement without the prior written consent of AMTSO or as otherwise set forth in the Bylaws. For purposes of this Agreement, an assignment shall be deemed to include a transfer or sale of all or substantially all of the business of Member, or a merger, consolidation or other similar transaction that results in a change in control of Member.

**4.13 Force Majeure.** Neither AMTSO nor Member shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder 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.

**4.14 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.

**4.15 Execution.** Execution of this Agreement shall be through affirmative consent in the AMTSO Membership Application or otherwise provided by Member electronically.