



# Membership Agreement

Last Updated: March 21, 2019

**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 will 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 “**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 (the “**Purposes**”);

**Whereas**, the Board of Directors of AMTSO (the “**Board**”) has adopted amended and restated 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 for the consideration contained herein, and Member agrees to abide by the terms and conditions contained herein:

## 1. MEMBERSHIP AND VOTING

AMTSO Members will publicly, but non-exclusively, support the Purposes, though not necessarily each action, of AMTSO, and will agree to abide by the obligations set forth in this Agreement, including the payment of membership fees set forth below. Entity Members will be permitted to vote with the Membership at Large to the extent permitted by the Bylaws and applicable law. Individual Members will 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 “**Membership 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 2.2 herein. The Membership Fee due from each Member will be determined by such Member based on its annual revenue, or Individual status, 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

If any Member or potential Member is unable to pay the Membership Fee, petition may be made to the Board to waive or modify the fee. Members serving by invitation on the AMTSSO Advisory Board will not be required to pay the Membership Fee.

AMTSSO's "Fiscal Year" is June 30 to July 1. **The Membership Fee accrues on July 1 of each year, and is due by September 1 of the same year.** For new Members joining after July 1, the Membership Fee will be prorated as follows:

- The Membership Fee will be based on the quarter Membership is approved, and reduced as follows:
  - A new member joining on any date from July 1 to October 1 - the Membership Fee will not be reduced
  - A new member joining on any date from October 2 to January 1 – the Membership Fee will be reduced by 25%
  - A new member joining on any date from January 2 to April 1 – the Membership Fee will be reduced by 50%
  - A new member joining on any date from April 2 to July 30 – the Membership Fee will be reduced by 75%
- The Membership Fee for a new Member will be due 60 days from the date of invoice for the Membership Fee.
- The proration of the Membership Fee will only be available once for each Entity or Individual Member.
  - Thus, if an Entity Member joins in December of 2017 and has their Membership Fee prorated, they will not be eligible to have the Membership Fee prorated again for any subsequent year if they terminate their Membership and rejoin AMTSSO.

Subject to the terms of this Agreement, the Membership Fee entitles each Member to:

1. Full rights and privileges of Membership for the then current Fiscal Year;
2. Attendance by two Representatives of the Member at up to two AMTSSO Member Meetings in each Fiscal Year;
  - a. Attendance by any additional Representatives will require an additional fee to cover Meetings costs.
  - b. The "Additional Fee" is currently set at \$250 per additional Representative, which amount may be amended by the Board to cover additional Meeting costs.
  - c. **The Additional Fee must be paid in full prior to the date of the AMTSSO Member Meeting.**

AMTSSO will accept Membership Fee payment through **wire transfer, PayPal, or checks**, and **payment instructions will be provided to you prior to your payment becoming due.** Credit cards will be accepted as payment for Additional Fees only, and will not be accepted for payment of Membership Fees.

All Membership and Additional Fees are non-refundable and non-transferable.

**2.2 Costs and Expenses.** Each Member will bear its own costs and expenses related to membership in AMTSSO, including:

1. All bank costs or other expenses associated with payment of the Membership Fee;

2. All local, state, federal, or international taxes due from Member in connection with payment of the Membership Fee;
3. Any compensation payable to Member's employees and consultants that participate in AMTSO on behalf of Member; and
4. 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, including on termination of Membership.

**2.3 Compliance with Policies.** Member agrees to abide by, and will 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, Privacy Policy, and such other Policies and Guidelines that are generally applicable to the Members at Large, or a Member in particular, as AMTSO may adopt from time-to-time.

**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, will 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 to promote 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 will be subject to the applicable usage guidelines of that Member.

**2.5 Use of Name.** Members agree to comply with the current AMTSO Trademark Usage Guidelines.

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

**3.1 Term.** This Agreement, as it may be updated and amended from time-to-time, is applicable for the term of each Membership. The term will commence on the date that Member is notified by the Company that its Membership has been accepted, and will end on the termination, expiration, or cancellation of the Membership, or any earlier termination of this Agreement by Member or the Company.

**1.1 3.2 Termination.** Member may terminate its Membership at any time by providing notice to AMTSO, or may be removed or suspended from Membership in AMTSO in accordance with the Bylaws. The Company will have the right, in its complete and sole discretion, to terminate this Agreement for cause if Member: (a) willfully does not pay its financial obligations to the Company; (b) materially fails to observe the rules and regulations of the Company; (c) engages in conduct that is seriously detrimental to the best interest of the Company, its purposes, its Members, or its interests; or (d) otherwise fails to comply with the terms and conditions of this Agreement. The Company will not be responsible for a refund of any fees and charges paid by Member prior to termination of this Agreement for cause. Upon termination of Membership, this Membership Agreement will terminate. As set forth in Section 2.2 above, Member will not be entitled to any refund or reimbursement from AMTSO, including on termination.

**3.3 Survival.** In the event of termination of Membership, Section 4 will survive and remain in effect. In addition, all intellectual property matters will continue to be subject to the provisions of the IP Policy that was in effect at the time of termination of Membership. Member will 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. DISPUTE RESOLUTION**

**4.1 Discussions.** In the event of any controversy or claim between Member and AMTSO arising out of or relating to the Bylaws, this Agreement, or any policies of AMTSO, or the breach of any of the foregoing, the aggrieved party shall provide notice to the other party of any such controversy or claim. Within ten (10) days of such notice, at least one officer or director representing each party shall meet in person or telephonically for a minimum of 1.5 hours, at a mutually agreed time and location, to attempt to resolve the claim or controversy in good faith.

**4.2 Mediation.** If any controversy or claim between Member and AMTSO arising out of or relating to the Bylaws, this Agreement, or any policies of the Corporation, or the breach of any of the foregoing, is not resolved after at least one in-person or telephonic meeting held in accordance with Section 4.1, Member or AMTSO may submit the claim or controversy to nonbinding mediation by a mediator to be selected by the parties from a panel selected by the International Chamber of Commerce (“ICC”) ADR Dispute Resolutions Services. The parties agree to mediate in good faith over a minimum period of thirty (30) days. The location of the mediation shall be in Santa Clara County, California, U.S.A., or a location where the parties mutually agree. The expenses of the mediation, including the mediators' fees, shall be shared equally among the parties, unless the parties agree otherwise. Each party shall be responsible for its own attorneys' fees and travel expenses, including expert witnesses. Except as set forth below, the parties shall keep confidential the fact of the mediation, the dispute being mediated, and the decision of the mediator. Notwithstanding the foregoing, the parties may disclose information about the mediation to persons who have a need to know, such as directors, trustees, experts, investors, insurers, legal counsel, and when required to disclose by applicable securities laws.

**4.3 Equitable Relief.** Nothing in Section 4.2 **Error! Reference source not found.** shall preclude an action for equitable relief by either party, including, but not limited to, proceedings to enforce a party's rights relating to intellectual property or confidential information. The parties agree that any material breach of the Bylaws, this Agreement, or AMTSO's policies relating to confidential information or intellectual property rights by either party or its directors, officers, employees, affiliates, agents, advisers, attorneys, accountants, consultants, bankers, or other representatives may cause immediate and irreparable harm, for which monetary damages would be inadequate or difficult to ascertain. The parties therefore agree that upon the existence of any such breach or threatened breach, at any time after at least one in-person or telephonic meeting held in accordance with Section 4.1, the non-breaching party may seek a temporary restraining order or other equitable relief without posting a bond or other form of security, from any court having jurisdiction over the matter, either before or after mediation is commenced. No such request is a waiver of the right to submit any dispute to mediation. The temporary or interim relief may remain in effect pending the outcome of mediation. This paragraph will not limit either party's rights to obtain monetary damages in addition to or as substitution for such equitable relief.

**4.4 Violation of this Section 4.** If Member commences a lawsuit against AMTSO without first engaging in good faith discussions in accordance with Section 4.1 and mediation in accordance with Section 4.2, other than a request for a temporary restraining order or other equitable relief in accordance with Section 4.3, such act shall be deemed a material breach and material violation of this Agreement, and, in addition any other rights and remedies available to AMTSO, AMTSO shall be entitled to recover costs and expenses, including attorneys' fees, incurred by it in the course of pursuing dismissal of or otherwise defending such lawsuit.

**4.5 Survival.** This Section 4 shall survive termination of Member's membership for any reason.

#### **5. GENERAL**

**5.1 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.

**5.2 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.

**5.3 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.

**5.4 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.

**5.5 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.

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

**5.7 Notices; Consent to Use of Personal Data.** All notices or other communications to or upon AMTSO or any Member will be delivered to or at the addresses provided in connection with the execution of this Agreement, as may be updated from time-to-time by Member 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 will 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.** Member hereby consents to the collection and use by AMTSO of any “personal data” that Member may provide from time to time. For the purposes of this Agreement, “personal data” means any information relating to an identified or identifiable natural person. Member hereby agrees that it will not provide any personal data (including, for example, contact information for an individual within the Member’s organization) without compliance

with all applicable privacy and data protection laws and regulations, and its own privacy policy, terms of use, and contracts to which Member is bound.

**5.8 Complete Agreement; No Waiver.** Except with respect to the Bylaws, IP Policy, Privacy 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 will 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 under this or any other policy or procedure will not constitute a waiver of any other right hereunder or any subsequent breach or default.

**5.9 Severability.** If any provision of this Agreement is determined by a court to be unenforceable, the parties will 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.

**5.10 Confidentiality.** AMTSO will make reasonable efforts to ensure that its Member meetings and any AMTSO non-public forum are only accessible to Members or others that have signed confidentiality agreements with AMTSO; however, given that the Membership represents multiple competitive organization, each Member should carefully consider any information or contributions made and clearly indicate prior to making such contribution if the Member has an expectation that such information be kept confidential. **“Confidential Information”** includes any information distributed or otherwise provided by AMTSO or any Member that is designated as “Confidential,” or that a reasonable person would ascertain is meant to be designated as “Confidential.” Confidential information does not include (a) information that is obtained by the recipient without breach of any obligation to maintain confidentiality; (b) information which is or becomes known to the public through no act or omission of the recipient, including, but not limited to, information disclosed or available through AMTSO’s public website; (c) information that is disclosed in response to a valid court or governmental order; (d) information that is known to the receiving party prior to disclosure by the disclosing party; or (e) information that is disclosed to the receiving party by a third party not bound by a confidentiality restriction.

Both AMTSO and each Member hereby acknowledge and agree to use commercially reasonable efforts to not disclose Confidential Information to any other party, and to treat such Confidential Information with the same degree of care that it exercises with respect to its own information of like importance, but in no event less than reasonable care. Any disclosure of information by Member will be subject to these provisions, the Antitrust Policy, Bylaws, Privacy Policy, and Intellectual Property Policy, and to the AMTSO Contribution and License Agreement, which covers the contribution of intellectual property by any Member to AMTSO.

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

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

**5.13 Single Membership; Assignment and Change of Control.** An Entity or Individual may only hold a single Membership in AMTSO, and each Entity is entitled to a single vote in any AMTSO business. Therefore, an Entity that is a subsidiary or otherwise controlled by any Member may not join AMTSO

under a separate Membership, and no Individual employed by such entity or otherwise controlled by any Member may otherwise sustain a separate Membership in AMTSO.

If a Member undergoes a transfer or sale of all or substantially all its business, or a merger, consolidation or other similar transaction that results in a change in control of Member ("**Change in Control**"), the 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.

If a Member undergoes a Change of Control after which it is controlled by, or under common control with, another Member, such Member's Membership will terminate, leaving a single Membership for the combined Entities. If two Members undergo a Change of Control, in which they merge into a single Entity, the Membership of both Members will terminate, and the new single Entity will be granted, without additional cost, Membership for the remainder of the then current Fiscal Year.

**5.14 Force Majeure.** Neither AMTSO nor Member will 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.

**5.15 General Construction.** As used in this Agreement, the plural form and singular form each will 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 may be through: (i) affirmative consent in the annual Membership Fee payment renewal submission, **OR** (ii) manual signature on the signature page of this Agreement. Please return any manually signed Agreement to [membership@amtso.org](mailto:membership@amtso.org).

**4.16 Amendments.** The Company reserves the right to change this Agreement or its terms at any time and may terminate or modify the license granted herein with respect to any Member individually, or all Members collectively, at any time. Any change to this Agreement or its terms will be effective as of the date of posting notice of such change to the Company's website, or actual notice to Member, whichever is earlier.

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IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the date set forth below.\*

MEMBER Name: \_\_\_\_\_

Signature of Authorized Party: \_\_\_\_\_

Name of Authorized Party: \_\_\_\_\_

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

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

Email Address, for Notice Purposes: \_\_\_\_\_

Mailing Address, for Notice Purposes:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*\*Please note, per Section 4.15 of the Agreement, execution of the Agreement may be through: (i) affirmative consent in the annual Membership Fee payment renewal submission, **OR** (ii) manual signature on the signature page of this Agreement.*

*If you choose to manually sign this Agreement, please return the executed Agreement to [membership@amtso.org](mailto:membership@amtso.org).*