

# NFC Forum Certification Agreement

## Issue 4.0 – September 2015

This Certification Agreement ("Agreement") is made and entered into by and between the following Parties: Near Field Communication Forum, Inc. ("NFC Forum"), 401 Edgewater Place, Suite 600, Wakefield, MA, 01880, USA, and the Supplier.

Whereas, the Supplier wishes to submit an implementation for certification in the NFC Forum Certification Program ("the Certification Program");

Whereas the implementation is uniquely defined in the Registration Form; and

Whereas, NFC Forum is the Certification Administrator operating the Certification Program in accordance with the terms of the NFC Forum Certification Policy.

Now therefore, in consideration of the mutual rights and obligations of the Parties set forth below, the Parties agree as follows:

## 1. Definitions

For purposes of this Agreement, the following terms shall have the following meanings:

Applicable Certification Requirements	The Applicable Certification Requirements as defined in Section 4.2 of the Certification Policy.
Certification Policy	The "NFC Forum Certification Policy" document, as amended from time to time by the NFC Forum, currently available at <a href="http://nfc-forum.org/our-work/compliance/certification-program/forms-documents/">http://nfc-forum.org/our-work/compliance/certification-program/forms-documents/</a>
Certification Register	The official list of all Certified Implementations and related information that is maintained by the Certification Administrator and made available on the Certification Program website.
Certification System Deficiency	An agreed error in the certification system, which is inhibiting the certification process. The certification system includes the documentation and information systems provided to implement certification. A Certification System Deficiency is one possible outcome of a Problem Report.
Certification Testing	Testing that an NFC Forum Implementation must undergo to achieve certification.
Certified Implementation	An active NFC Forum Implementation that has successfully completed the certification process and for which the Supplier has been notified in writing by the Certification Administrator that certification has been achieved and for which certification is still in force.

Implementation Conformance Statement (ICS)	A checklist of the capabilities supported by an NFC Forum Implementation. It provides an overview of the features and options of the Specifications that are implemented, including the modes of operation that the product supports (see NFC Forum Device Requirements). The Implementation Conformance Statement is used to select and parameterize test cases and as an indicator for basic interoperability between different products.
Interpretation	A decision made by the NFC Forum NCIRP that elaborates or refines the meaning of an NFC Forum Specification or the NFC Forum Device Requirements, or an external standard referenced within them. An Interpretation is one possible outcome of a Problem Report.
NCIRP	The NCIRP (NFC Forum Certification Issue Resolution Panel) is the NFC Forum Committee responsible for responding to Problem Reports and Notices of Non-compliance.
NFC Forum Device Requirements	The definition of the parts of the NFC Forum Protocol stack that must be present in a product to be eligible for certification. NFC Forum Device Requirements include separate definitions for Peer Mode, Reader/Writer Mode, and Card Emulation Mode, and defines the Certification Release.
NFC Forum Implementation	The combination of hardware, software, and mechanical components that together deliver NFC Forum Functionality and that meets the requirements defined in the NFC Forum Device Requirements.
NFC Forum Test Specification	The set of tests and testing-related information that NFC Forum uses to confirm the compliance of an IUT to the corresponding NFC Forum Specifications.
Person	Includes a body of persons whether or not incorporated.
Problem Report	A question of clarification, intent, or correctness about a specification, a test case, or the certification system, which, if accepted by the NCIRP, will be resolved into an Interpretation, Test Case Deficiency, or Certification System Deficiency respectively.
Registration Form	A form completed by the Supplier to register a particular NFC Forum Implementation for certification. The form contains information on the Supplier and the implementation to be certified.
Specifications	The detailed technical specifications published by NFC Forum that define the radio frequency and protocol capabilities and behaviors that deliver NFC functionality. The Specifications may include, by reference, specifications and standards published by other organizations.
Test Case Deficiency	An error agreed by the NCIRP in an NFC Forum test case that is causing it to produce an incorrect result impacting certification. A Test Case Deficiency is one possible outcome of a Problem Report.

Test Case Categories List (TCCL)	A document listing the test cases categorized in terms of the conditions under which they are to be used in Certification Testing. The TCCL is maintained by the NFC Forum and made available on the Certification Program web site.
Test Release	The NFC Forum may publish new versions of its Test Specifications and will collect them into consistent sets to aid procurement, development, certification, and testing. This set is called a Test Release and is documented in the NFC Forum Device Requirements.

## 2. The Certification Administrator's Obligations

### Certification

The Certification Administrator will check to ensure that the submitted certification information, including the registration information, ICS, test plan and test results (as per the summary test report), demonstrates that the product passed the formal testing process and meets the Applicable Certification Requirements. The Certification Administrator will complete the audit and notify the Supplier via electronic mail of the audit result within ten (10) calendar days of receipt of a complete submission. If an incomplete submission is received, the Supplier will be notified within ten (10) calendar days via electronic mail with a list of all the missing or incomplete items. Once the complete submission is received, the audit will resume, with an additional eighteen (18) calendar day turnaround.

If the audit indicates that the Applicable Certification Requirements have been met, the Certification Administrator will notify the Supplier via electronic mail of the successful certification. If the organization requested during the registration process to keep the certification confidential as per Section 15.3 of the Certification Policy, "Optional Confidential Treatment of Certification Information Prior to Product Launch", then the Certification Administrator will maintain confidentiality as per Clause 4, item iv of this Agreement. If a confidential period was not requested or the confidential period has ended, then the Certification Administrator will enter the Certified Implementation into the Certification Register and make it available publicly according to Section 15.2 of the Certification Policy, "Disclosure of Certification Information".

If the audit indicates that the Applicable Certification Requirements have not been met, the Certification Administrator will notify the Supplier via electronic mail of the deficiencies, which must be corrected within sixty (60) calendar days for certification to be successful. The certification fee covers only one set of corrective actions and resubmission. A further fee may apply for additional work beyond this.

### Anonymity of Appeals

In the event that the Supplier desires to appeal a decision made by the Certification Administrator or the NFC Forum by invoking the appeals process defined in the Certification Policy, and wants the appeal to be anonymous, the Certification Administrator will facilitate an anonymous review on behalf of the Supplier.

## 3. The Supplier's Obligations

In addition to providing the certification-related information as part of the registration process, the Supplier undertakes to answer all reasonable additional questions the Certification Administrator may raise.

## Registration and Payment

The Supplier must complete a registration form, thoroughly defining the implementation to be certified. To complete the submission, the Supplier must formally accept the terms of this Agreement, and authorize payment of the applicable certification fees when due.

Supplier acknowledges and understands that only NFC Forum members and certain of their affiliates are eligible to enter into trademark license agreements with the NFC Forum that will then allow the organization to claim certification and display NFC Forum marks and logos in accordance with the terms of the trademark license agreement(s) and the Certification Program.

Payment is required to complete the registration process. Payment may either be by credit card, at the time of registration, or by check or wire transfer received by the Certification Administrator in advance of registration. The Certification Administrator will not process the registration until payment has been received. Alternatively, payment may be invoiced to the Supplier quarterly in arrears if prior arrangements for invoicing have been made in advance with the Certification Administrator.

## Testing for Certification

Testing for certification must be carried out as described in Section 8 of the Certification Policy, "Testing for Certification", using validated test tools to execute the test cases in accordance with the test plan and the Test Case Categories List (TCCL). The list of the authorized NFC Forum Test Specifications, validated test tools, the TCCL, and the summary test report template will be available on the Certification Program web site at <http://certification.nfc-forum.org>.

## Certification

After completing testing for certification, the Supplier agrees to provide the ICS, test plan, and summary test report to the Certification Administrator, along with references to all relevant Interpretations, Test Suite Deficiencies, Certification System Deficiencies, or temporary waivers if so granted by the NCIRP, to explain all untested or failed tests. The Supplier also agrees to submit the summary test report in the style and format of the summary test report template made available on the Certification Program web site.

The Supplier also agrees to comply with the Certification Administrator's reasonable requests for clarification or rework regarding the completeness, correctness, or consistency of the information provided.

Confirmation by the Certification Administrator that the Certification Requirements have been met does not grant Supplier the right to publicly assert a claim of certification under any NFC Specification, or to use any NFC trademark, or logo. Such rights may only be secured by entering into such form of Trademark License Agreements as NFC Forum shall at such time be using in connection with this Certification Program.

## Warranty and Representation

**By accepting this agreement, the Supplier hereby warrants and represents that the implementation identified in the Registration Form meets the Applicable Certification Requirements at the time of certification and will continue to pass the tests that were in force at the time of certification, independent of any changes made. The Supplier also hereby warrants and represents that the Supplier has met the requirements for a Quality Management System as defined in the Certification Policy and will continue to meet such requirements throughout the manufacturing life of the implementation for so long as the implementation remains a Certified Implementation.**

**It is the Supplier's responsibility to ensure that all manufactured units of the Certified Implementation continue to meet the Applicable Certification Requirements as stated in the ICS and would pass Certification Testing as it was defined when the implementation was certified. If the Supplier fails to ensure continued conformance with the Applicable Certification Requirements, the Certification Administrator will invoke the processes defined in the Certification Policy, more specifically, but not by way of limitation, in Section 5.2, "Maintaining Certification".**

## **Archiving Certification Materials**

The Supplier must store all detailed test results used to substantiate a registration for certification for as long as the NFC Forum Certification Mark is used on or in relation to the Certified Implementation and for a period of one year thereafter, and in no event for a period less than 6 years from the date at which the Certification Administrator notifies the Supplier that certification has been achieved. This obligation shall remain in effect, even if the Supplier's Certified Implementation ceases to be certified.

It is the responsibility of the Supplier to make any information related to an application for certification, including detailed test results, available to the Certification Administrator at any time upon request. Supplier agrees to send requested information to the Certification Administrator within 14 calendar days of the Certification Administrator making such request.

## **Maintaining Up-to-Date Certification Information**

A Supplier that makes any changes to a Certified Implementation is responsible for ensuring that the necessary documentation and testing is completed in accordance with Section 9 of the Certification Policy, "Changes to a Certified Implementation".

A Supplier with a Certified Implementation is responsible for ensuring that the names and contact information for all contacts are up-to-date. Changes to such information must be provided to the Certification Administrator.

Annually, the Certification Administrator will contact the Supplier via email sent to the Supplier's designated contacts requesting confirmation that the certification listing should remain active or allowing the Supplier to de-list the certification in accordance with Section 12 of the Certification Policy, "Archiving and De-Listing". The supplier may be required to pay an annual listing fee as defined by the NFC Forum from time to time. Failure to respond to the Certification Administrator within 30 calendar days requesting the certification listing remain active will result in the certification being archived. Re-listing of archived products is possible on request upon payment of the appropriate re-listing fee as defined by the NFC Forum from time to time.

## **4. Confidentiality**

- i. The Certification Administrator shall, except where a provision of this Agreement provides otherwise, maintain in confidence all information the Supplier discloses to the Certification Administrator in relation to NFC Forum certification. No license, express or implied, under any trademark, copyright, or other IPR is granted by the Supplier to the Certification Administrator by virtue of such disclosure and the Certification Administrator shall not use any such information except for the purposes of this Agreement. The Certification Administrator's obligations under this sub-clause shall be limited to taking such steps as it ordinarily takes to preserve the most important of its own confidential information. The obligations of non-disclosure and non-use set out in this Agreement shall not apply to any item of information which:
  - a. Is in the public domain at any time (but without prejudice to any Person's rights of action against another Person who wrongfully causes or permits such information to be in the public domain),

- b. Was rightfully in the receiving Person's possession without obligation of confidence prior to its disclosure pursuant to this Agreement, or is subsequently independently developed by the receiving Person's employees having no access to the information disclosed hereunder,
- c. Is subsequently rightfully obtained without obligation of confidence by the receiving Person from a source other than the Supplier as evidenced by written records,
- d. Is required to be disclosed by order of any court of competent jurisdiction,

PROVIDED that no right or interest under any license, patent, or otherwise shall be acquired by the recipient of any information by virtue of the application of this clause.

- ii. Information regarding the results of testing shall not be disclosed in any publicly available document or to any third party by the Certification Administrator, the Supplier, or any party acting on the Supplier's behalf, provided, however, that the Certification Administrator shall, on the written request of NFC Forum, make the results and other details of testing available to NFC Forum for any purpose reasonably related to the proper functioning of the Certification Program or NFC Forum's relationship to it, provided that the NFC Forum shall have undertaken in writing not to disclose such results and other details to any third party without the prior written permission of Supplier, or as otherwise required by law or legal process.
- iii. The Certification Administrator may disclose the Supplier's confidential information to those of its employees who reasonably require access to such information. The Certification Administrator may also disclose the Organization's confidential information to staff of Virtual Incorporated who reasonably require access to such information to support proper functioning of the Certification Program and who are bound to the same obligation of confidentiality as the Certification Administrator by the non-disclosure agreement in effect between NFC Forum and Virtual Incorporated. However, the Certification Administrator may not disclose the Supplier's confidential information to any employee of a member company in the NFC Forum, unless another exception to the obligations under this sub-clause applies. For the avoidance of doubt, the Certification Administrator may disclose the Supplier's confidential information to the Supplier's employees, or employees of any party acting on the Supplier's behalf.
- iv. To enable the Supplier to keep the fact of certification confidential for a period of up to six months from the date of written notice via electronic mail by the Certification Administrator that the implementation has achieved certification, the Supplier's identity, the fact of certification, and the name of the Certified Implementation (the Certification Information) will be kept subject to the disclosure and use restrictions set out in this clause. During this period, the Supplier may not publicly claim that the Certified Implementation is or has been NFC Forum certified, or make any representation of the Certified Implementation's conformance with the NFC Forum's specification(s) without first informing the Certification Administrator that the confidential period has expired. Certification Information will cease to be held confidential upon the earlier of written notice via electronic mail by the Supplier that the confidential period has expired or at the end of the six-month period, provided that the Supplier has not requested withdrawal and deletion of such information.
- v. Except for disclosure to the Certification Administrator for the purpose of NFC Forum certification, the results of conformance testing and any other information about the Certified Implementation obtained during testing shall be held confidential.

## **5. Liability and Indemnity**

### **Liability**

THE SUPPLIER ACKNOWLEDGES THAT BECAUSE OF THE SPECIAL NATURE OF THE CERTIFICATION PROGRAM IT IS REASONABLE FOR NFC FORUM TO EXCLUDE LIABILITY AS SET OUT BELOW AND FOR THE SUPPLIER TO TAKE MEASURES, INCLUDING INSURANCE

WHERE APPROPRIATE, TO MITIGATE OR PREVENT ANY POTENTIAL LOSSES THAT MAY ARISE (PROVIDED THAT SUCH MEASURES ARE NOT IN BREACH OF THIS AGREEMENT).

NFC FORUM ON ITS OWN BEHALF AND ON BEHALF OF ITS OFFICERS, EMPLOYEES AND AGENTS HEREBY EXCLUDES ALL LIABILITY, WHETHER IN CONTRACT, TORT, OR OTHERWISE, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE USE OR NON-USE BY ANY PERSON OF ANY INFORMATION PROVIDED BY IT TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW. IN NO EVENT SHALL ,NFC FORUM, NOR THE SUPPLIER BE LIABLE FOR ANY INDIRECT OR CONSEQUENTIAL LOSSES (INCLUDING, WITHOUT LIMITATION, ANY LOSS OF PROFITS, CONTRACTS, PRODUCTION OR USE).

## **Indemnity**

The Supplier shall indemnify and hold harmless each of the Certification Administrator and NFC Forum together with its officers, servants, agents, subcontractors, and shareholders or members, as the case may be, and their servants when engaged in activities on behalf of the Certification Administrator or NFC Forum, as the case may be, but only to the extent that they are acting in that capacity (together the "Indemnified") against any and all demands, claims, and liability for direct losses, damages, settlements, and costs (including lawyers' fees) of any nature whatsoever asserted against or suffered by the Indemnified, but limited to demands and claims from a third Person, and further limited to liability incurred from such demands and claims arising out of the Supplier's manufacture, use, or supply of the Certified Implementations, provided that:

- a. Any such demand and claim is based on the Certification Program under this Agreement and not caused by any criminal action, negligence, breach of this Agreement, act or omission, or tort by the Indemnified,
- b. The Indemnified notifies the Supplier within ten days of any such demand and claim, and refrains from any action on account of such demand and claims which may prejudice the Supplier, and
- c. The Supplier is given full authority and sole control to defend and settle any such demands and claims.

The Certification Administrator shall take all reasonable steps to limit such damage or loss.

No provision of this clause shall apply in any circumstances or in respect of any liability or class of liability to the extent that it may not apply in accordance with applicable law. In the event of such a provision being held to be inapplicable or invalid the Parties will make such amendments to this Agreement by the addition or deletion of wording, or otherwise, so as to remove the inapplicable or invalid part of the provision but otherwise retain the provision to the extent permissible under applicable law.

## **6. General**

### **Entire Agreement**

This Agreement including any documents referred to therein (as amended from time to time) together with all other forms relating to this Agreement submitted and accepted by both Parties constitutes the entire agreement and supersedes all prior oral or written agreements, understandings, or arrangements between the Parties relating to such subject matter. Neither Party shall be entitled to rely on any agreement, understanding, arrangement, or representation relating to the subject matter of this Agreement which is not expressly contained in this Agreement and no change may be made to this Agreement except in writing and signed by duly authorized representatives of both Parties.

### **Waiver of Rights under this Agreement**

No failure or delay on the part of either of the Parties to exercise any right or remedy under this Agreement shall be construed or operate as a waiver thereof nor shall any single or partial exercise of any right or remedy preclude the further exercise of such right or remedy as the case may be.

## **Notices**

Any notice or other document to be given under this Agreement shall be in writing in the English language and, except in circumstances where this Agreement specifically provides for notices by electronic mail, shall be deemed to have been duly given if sent by hand, or by courier, or by facsimile to a party at the specified address for that party, unless a different address has been notified to the other in writing for this purpose. The specified address for the Certification Administrator is the address set out above, and the specified address for the Supplier is the address currently on record with the Certification Administrator for the Authorized Signatory.

Notices shall be deemed to have been received by the addressee within 72 hours of dispatch by courier as above or within 24 hours if sent by hand or facsimile to the addressee's correct address.

## **Interpretation**

The headings in this Agreement are inserted only for convenience and shall not affect its construction.

Where appropriate words denoting the singular only shall include the plural and vice versa.

## **Assignment**

This Agreement may only be assigned by Supplier in connection with a sale or transfer of all of its rights to sell the Certified Implementations to which it relates. The Certification Administrator may assign this Agreement at any time to a new Certification Administrator designated by NFC Forum, upon 30 days advance notification by electronic mail to the Supplier's Authorized Signatory on record with the Certification Administrator.

## **Term and Termination**

This Agreement comes into effect at the date of acceptance by the Supplier and will expire only if explicitly terminated:

1. At any time upon six months' written notice by either Party to the other; or
2. If a period of 30 days has elapsed from one Party notifying the other Party of a breach of this Agreement, or of the terms of the Certification Policy, and such a breach has not been rectified to the satisfaction of the other Party.

Notwithstanding the termination of this Agreement for any reason, (i) the obligations of non-disclosure in respect of any confidential information disclosed prior to such termination shall survive for a period of five years following such termination, and (ii) the terms of Clause 5 shall survive perpetually.

## **Governing Law**

This Agreement shall be governed by the laws of the Commonwealth of Massachusetts and the Parties hereby submit to the non-exclusive jurisdiction of the Massachusetts courts.



## 7. Fees

The Fees described on the Fee Schedule located at <http://nfc-forum.org/our-work/compliance/certification-program> are quoted net of all applicable taxes and duties which, where appropriate, will be payable by the Supplier to the Certification Administrator (or to the relevant tax authorities as applicable) in addition.

The Certification Administrator will charge the applicable fees as described on the Fee Schedule. The Supplier agrees to incur the applicable fee for each certification transaction.

Fees are payable in U.S. dollars and will be debited against the credit card provided to the Certification Administrator (unless prior arrangement has been made with the Certification Administrator for an alternate form of payment). Fees are non-refundable.

## 8. Execution

**By accepting this agreement, the Supplier:**

- 1. Hereby acknowledges reading and understanding of this Agreement;**
- 2. Agrees to be bound by the terms of the Certification Policy and this Certification Agreement;**
- 3. Warrants and represents that all implementations which share the Implementation Name defined in the Registration Form, meet the Applicable Certification Requirements;**

**and, the Supplier agrees that all these obligations and those described in the Confidentiality and Indemnity clauses of this Agreement shall survive the termination of this Agreement.**