

# The Open Group Certification for People Program Accredited Training Course Affiliate Agreement

**June 2016, Version 1.4**

This Training Course Affiliate Agreement is made and entered into by and between the following Parties: The Open Group, L.L.C., a Delaware LLC, (“The Open Group”) and the entity described in the signature section of this Agreement (“Affiliate”). The Open Group and the Affiliate are sometimes referred to herein as a “Party” or the “Parties”.

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

## **1. Scope of Agreement**

- 1.1 This Agreement authorizing Affiliate to deliver or support the delivery of one or more Accredited Training Courses (ATC) on behalf of its sponsor ATC Provider shall be executed once.
- 1.2 Each ATC with which Affiliate is to be affiliated shall be as identified in a fully executed Affiliation Schedule incorporated into this Agreement. Together, this Agreement and the Affiliation Schedule embody the entire agreement between the Parties relating to the ATC identified in the Affiliation Schedule.
- 1.3 This Agreement and its Schedules incorporate the applicable Program Configuration, The Open Group Certification for People Training Course Accreditation Policy and The Open Group Certification for People Training Course Accreditation Requirements, which may be found on the Certification Authority’s website.

## **2. Definitions:**

<b>Accreditation</b>	Accreditation of some aspect of an organization means that organization has been independently assessed as meeting a set of criteria, which usually include criteria for the applicable quality assurance system. For example, an institution of learning may be termed “Accredited” after an assessment by an official review board states that the institution has met specific requirements.  In The Open Group Certification for People Program, Accreditation is the term used for training courses that meet the Program requirements, and Certification is the term used for people who meet the Program requirements.
<b>Accreditation Logo</b>	The trademarks and tag lines as designated from time to time by The Open Group for use in association with Accredited Training Courses.
<b>Accreditation Policy</b>	The Open Group Certification for People Training Course Accreditation Policy document relating to the Program, as amended from time to time by The Open Group and made available on the Certification Authority’s website.
<b>Accreditation Register</b>	The official list of all Accredited Training Courses, which is maintained by the Certification Authority and made publicly available on the Certification Authority’s website.

<b>Accreditation Requirements</b>	The criteria that a training course and the training course provider must meet in order for that course to be considered conformant. These criteria are documented in The Open Group Certification for People Training Course Accreditation Requirements document relating to the Program and made available on the Certification Authority's website.
<b>Accreditation Trademark License Agreement (Accreditation TMLA)</b>	The agreement between the Affiliate and The Open Group that contains the legal commitment by the ATC Provider and its Affiliate(s) to the terms and conditions for use of the Accreditation Logo relating to the ATC Provider's Accredited Training Course(s).
<b>Accredited Training Course (ATC)</b>	A training course, operated by a training course provider, that has successfully completed the Accreditation process and which is listed in the Accreditation Register.
<b>Affiliate</b>	A partner of an ATC Provider and Party to this Agreement that delivers, or supports the delivery of, an Accredited Training Course on their behalf.
<b>Affiliation Schedule</b>	The Schedule containing the supplemental details that identify the Accredited Training Course and the ATC Provider that is sponsoring, the Affiliate's delivery or delivery support of the Accredited Training Course.
<b>ATC Provider</b>	A provider of training courses that offers at least one Accredited Training Course. An ATC Provider may sponsor an Affiliate to deliver or support the delivery of an Accredited Training Course.
<b>Broker</b>	An advertising, promotions and/or marketing services entity that enters into a commercial contract with an ATC Provider or an Affiliate to advertise, promote and/or market the Accredited Training Course.
<b>Certification Authority (CA)</b>	The organization that manages the day-to-day operations of the Program in accordance with the policies defined in the Certification Policy and Accreditation Policy, including any third party acting on behalf of the Certification Authority. The Open Group is the Certification Authority for the Program.
<b>Person</b>	Includes a body of persons whether or not incorporated.
<b>Program</b>	The Open Group Certification for People Program specifically identified in the Program Configuration document.
<b>Registration Form</b>	A web form completed by the Affiliate to deliver an ATC Provider's Accredited Training Course.
<b>Schedule</b>	The document containing supplemental details that is mutually executed (either signed or through The Open Group online certification system) and incorporated into this Agreement. Together with this Agreement, it embodies the entire agreement between the Parties relating to its subject matter.
<b>Standard</b>	The standard or list of standards, which define the body of knowledge covered by the Program, as defined in the Program Configuration document.

### **3. The Affiliate's Obligations**

#### **3.1 Affiliation Process and Payment of Affiliation Fees**

- 3.1.1 After the ATC Provider completes a Registration Form identifying the Affiliate and the ATC with which it is to be affiliated, the Affiliate must execute the following agreements with The Open Group, if not previously executed and in force:
- a) This Accredited Training Course Affiliate Agreement, including an Affiliation Schedule corresponding to the applicable Accredited Training Course;
  - b) The Open Group Certification for People Accreditation Trademark License Agreement; and,
  - c) The Annual Commercial License for commercial use of The Open Group Standard covered by the ATC. The Commercial License must be valid throughout the term of the ATC affiliation.
- 3.1.2 The Affiliate must authorize payment of the applicable affiliation fees when due, if they have not already been paid by the ATC Provider. Unless the Certification Authority has agreed alternative arrangements for payment in advance, payment must be made by credit card, at the time of registration. The Certification Authority will not complete the affiliation process until payment has been received.
- 3.1.3 The affiliation fee covers only one resubmission of information to the Certification Authority. A further fee may apply for additional resubmissions.
- 3.1.4 The Affiliate must submit the applicable accreditation documents for review by the Certification Authority. In addition, Affiliate must undertake to answer all questions and provide additional information reasonably related to affiliation as requested by the Certification Authority.

#### **3.2 Duration and Renewal of Affiliation**

- 3.2.1 Affiliation is valid from the date at which the Certification Authority provides written notice to the Affiliate that affiliation has been achieved until the next anniversary of the ATC's Accreditation, unless removed in accordance with this Agreement.
- 3.2.2 Affiliation may be renewed annually for a 12-month period, provided that the ATC is still listed in the Accreditation Register. Renewal of affiliation requires payment of the annual fee, re-commitment by the Affiliate to the terms of this Agreement, and re-commitment by the ATC Provider to the terms of the Accreditation Agreement. Renewal must be completed by the anniversary date of the ATC's Accreditation.
- 3.2.3 Affiliation is concurrent with the period of Accreditation of the ATC with which the Affiliate is affiliated. All Affiliate rights with respect to an ATC will cease when the ATC ceases to be accredited. This includes any rights to promote the course as accredited or purchase exam vouchers.

#### **3.3 Maintaining Affiliation**

- 3.3.1 After successfully completing the affiliation process and Affiliate has been added to the ATC entry in the Accreditation Register, Affiliate warrants that it shall deliver on the ATC course to which it is affiliated and that its delivery meets and continues to meet the Accreditation Requirements for so long as Affiliate remains listed in the Accreditation Register.
- 3.3.2 Affiliate shall at all times abide by the terms and conditions of the Accreditation Policy and Accreditation Requirements, defined by the Program Configuration relating to the ATC it is affiliated to deliver on behalf of its sponsor ATC Provider.
- 3.3.3 Affiliate will accurately communicate all information required of the Affiliate to maintain Affiliate registration with the Certification Authority in accordance with the Accreditation Policy and the Accreditation Requirements. In particular, Affiliate is responsible for ensuring that the names and

contact information for all contacts specified in the web-based accreditation system are accurate and up-to-date. Changes to such information may either be made in the web-based accreditation system itself or by notifying the Certification Authority.

- 3.3.4 Affiliate shall only promote the ATC as belonging to the sponsor ATC Provider, faithfully adhering to the approved disclosure requirements, and shall not mislead or misrepresent the ATC as belonging to the Affiliate. Failure to strictly comply shall constitute a breach of this agreement and cause for termination.
- 3.3.5 Affiliate shall at all times comply with the trademark usage guidelines in the Accreditation Trademark License Agreement with respect to promotional material for sponsor ATC Provider's ATC and shall ensure that The Open Group's trademarks in general and the Accreditation Logo in particular are used only as permitted within the Program.
- 3.3.6 Affiliate shall not engage other entities as partners in the delivery of the ATC it has been affiliated to deliver.
- 3.3.7 Affiliate agrees not to copy, distribute, or permit use by others of any ATC course material that includes materials licensed by the sponsor ATC Provider from The Open Group.
- 3.3.8 If the sponsor ATC Provider provides integral examination as part of the ATC that is delivered by Affiliate, Affiliate warrants that its employees or contractors shall not supervise or proctor such integral examinations, nor shall Affiliate's employees or contractors be sponsor ATC Provider's contracted proctors.

### **3.4 Examination Vouchers**

- 3.4.1 Examination vouchers are an integral part of the ATC Program. In advance of delivery of each ATC, and for each ATC attendee, Affiliate must buy an appropriate examination voucher, either directly or through the sponsor ATC Provider, from the Certification Authority or its designated supplier of examination vouchers.
- 3.4.2 **Affiliate must provide an appropriate examination voucher to each ATC attendee, at no additional cost. The cost of this examination voucher must be included within the course fees. For the avoidance of doubt:**
  - **Failure to provide each course attendee with an examination voucher is a breach of this Agreement.**
  - **Selling examination vouchers to course attendees or others is a breach of this Agreement.**
- 3.4.3 In the case of courses for which the Certification Authority has approved the use of an alternative indicator of conformance, e.g., a paper-based examination, Affiliate will pay the Certification Authority, either directly or through the sponsor ATC Provider, the applicable fee for each course attendee, in advance of delivery of the ATC.
- 3.4.4 Affiliate will provide to its sponsor ATC Provider a quarterly statement of vouchers obtained directly through the Certification Authority for inclusion in the sponsor ATC Provider's quarterly statement of vouchers purchased in accordance with the Accreditation Requirements.

### **3.5 Brokers**

- 3.5.1 Affiliate is at all times responsible for its third party Brokers' promotion and marketing of the ATC and must ensure that said Brokers fully comply with the trademark usage guidelines in the Accreditation Trademark License Agreement with respect to promotional material for the ATC.
- 3.5.2 Affiliate must ensure that any Broker that it engages to promote the ATC does not deliver or support the delivery of the ATC. Specifically, employees and contractors of the Broker may not participate as trainers or staff in the delivery of the ATC.

3.5.3 Affiliate may be requested to identify its Brokers to the Certification Authority.

## 4. The Certification Authority's Obligations

### 4.1 Affiliation

- 4.1.1 The Certification Authority will perform all of the actions required of the Certification Authority in the Accreditation Policy.
- 4.1.2 The Certification Authority will, within ten (10) business days of receipt, audit the Registration Form and applicable accreditation documents, to determine if the submission is complete and well-formed and will notify the Affiliate and its sponsor ATC Provider via electronic mail with a list of any missing, incomplete, or poorly formed items. Once the revised submission is received, the initial audit will resume, with an additional ten (10) business days turnaround time.
- 4.1.3 If the Affiliate will be using their own quality system, the Certification Authority's assessors will perform an assessment of the quality system documentation within an additional ten (10) business days.
- 4.1.4 The Certification Authority will notify the Affiliate and its sponsor ATC Provider via electronic mail with the results of the affiliation process. If all requirements have been met, the Certification Authority will award affiliation to the Affiliate.

### 4.2 Duration and Renewal of Affiliation

The Certification Authority will send a renewal notice by electronic mail to the Affiliate and its sponsor ATC Provider at or before sixty (60) days prior to the anniversary date of the ATC's Accreditation.

### 4.3 Anonymity of Appeals

In the event that the Affiliate desires to appeal a decision made by the Certification Authority by invoking the appeals process defined in the Accreditation Policy, and wishes the appeal to be anonymous, the Certification Authority will facilitate an anonymous review on behalf of the Affiliate. **The Affiliate is responsible for maintaining its anonymity in all material submitted to the Certification Authority in support of its appeal.**

## 5. Confidentiality

- 5.1 The Certification Authority shall, except where a provision of this Agreement provides otherwise, maintain in confidence all information Affiliate discloses to the Certification Authority in relation to its affiliation with the ATC identified in the Schedules. No license, express or implied, under any trademark or copyright is granted by the Affiliate to the Certification Authority by virtue of such disclosure and the Certification Authority shall not use any such information except for the purposes of this Agreement. The Certification Authority'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 Affiliate 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.

- 5.2 The Certification Authority may disclose Affiliate's confidential information to those of its or its sponsor ATC Provider's employees and contractors who reasonably require access to such information. The Certification Authority may also disclose Affiliate's confidential information to any third party acting on behalf of the Certification Authority in the area of assessment and who reasonably requires access to such information. The Open Group will execute an agreement with such third party, which will include confidentiality terms equivalent to those appearing in this Clause 5, prior to sharing any of Affiliate's confidential information with the third party. However, the Certification Authority may not disclose the Affiliate's confidential information to any employee of a member company in The Open Group, unless another exception to the obligations under this sub-clause applies. For the avoidance of doubt, the Certification Authority may disclose Affiliate's confidential information to Affiliates employees, or employees of any party acting on Affiliate's behalf.
- 5.3 The Affiliate agrees to keep confidential any and all information that comes into its possession regarding the Program's examinations. If the Affiliate is found to have disclosed the content of any of the Certification Authority's examination scenarios, questions, or answers to any third party other than in the normal course of ATC attendees sitting the examinations, this Agreement and all Schedules attached to it will be immediately terminated and the Certification Authority shall have cause to remove the affiliated ATC(s) from the Accreditation Register.

## **6. Liability and Indemnity**

### **6.1 Liability**

THE AFFILIATE ACKNOWLEDGES THAT BECAUSE OF THE SPECIAL NATURE OF THE CERTIFICATION AUTHORITY IT IS REASONABLE FOR THE CERTIFICATION AUTHORITY TO EXCLUDE LIABILITY AS SET OUT BELOW AND FOR THE AFFILIATE 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).

THE CERTIFICATION AUTHORITY 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 THE CERTIFICATION AUTHORITY TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW. IN NO EVENT SHALL THE CERTIFICATION AUTHORITY BE LIABLE FOR ANY INDIRECT OR CONSEQUENTIAL LOSSES (INCLUDING, WITHOUT LIMITATION, ANY LOSS OF PROFITS, CONTRACTS, PRODUCTION OR USE).

### **6.2 Indemnity**

If a third party asserts a claim against The Open Group, the Affiliate hereby agrees, at its expense, to defend, indemnify and hold The Open Group and its respective officers, agents and employees (the "Indemnitees") harmless from such claim (whether criminal or civil, in contract, tort, or otherwise) by defending Indemnitees at the Affiliate's expense and paying all direct damages (including attorney's fees,

court costs and expert's fees) that a court finally awards against Indemnitees or that are included in a settlement approved in advance by the Affiliate, provided that the claim arises out of:

- a) Allegations that ATC Provider's training courses bearing the Trademark do not meet the Accreditation Requirements (but only to the extent The Open Group has performed its obligations set forth in the Accreditation Agreement); and/or
- b) The misuse of the Trademarks by the Affiliates; and/or
- c) The Affiliate's failure to discontinue its use of the Trademark pursuant to The Open Group's right to withdraw permission to use the Trademark pursuant to this Agreement.

PROVIDED that:

- a) This Indemnity shall not apply in respect of any act done by the Affiliate on the express instructions of The Open Group, and
- b) The Affiliate (together with any ATC Provider and/or other Affiliate under the Trademarks affected by such claims) shall have the conduct of such claims but shall consult fully with The Open Group before taking any action or making any admission or settlement, which may adversely affect The Open Group's interests.

### **6.2.1 Interpretation**

Any provision of Sub-clause 6.1 above shall not 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, as to remove the inapplicable or invalid part of the provision but otherwise retain the provision to the benefit of The Open Group to the maximum extent permissible under applicable law.

### **6.2.2 Damages**

In no event shall The Open Group be liable for any damages, including without limitation, loss of profits, arising from or related to the Affiliate's use of the Trademarks or the Termination of this Agreement, even if The Open Group has notice of the possibility of such damages.

## **7. Payment of Fees**

- 7.1 The fees are listed on the Certification Authority's web site and are quoted net of all applicable taxes and duties that, where appropriate, will be payable in addition by Affiliate to the Certification Authority or to the relevant tax authorities as applicable.
- 7.2 The Certification Authority will charge the applicable Affiliate fee upon receipt of a completed registration; such fee will be pro-rated by the number of whole months until the next anniversary of the ATC's Accreditation and annually thereafter. Either the Affiliate or the ATC Provider may make payment for these fees.
- 7.3 Fees for examination vouchers will be charged upon receipt of a request for vouchers.
- 7.4 Fees are payable U.S. dollars.
- 7.5 Unless the Certification Authority has agreed alternative arrangements for payment, fees must be paid by credit card in advance. Notwithstanding the foregoing, payment of any transaction valued at less than \$1,000 U.S. dollars must be paid by credit card.
- 7.6 Fees are non-refundable.

## **8. General**

### **8.1 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.

Notwithstanding the above, The Open Group may introduce changes to this Agreement as may be required by the Program. In such cases, changes shall immediately take effect either by a mutually signed amendment, or on click-to-accept execution in The Open Group online certification system (when available), executed no later than the anniversary date of this Agreement.

### **8.2 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.

### **8.3 Notices**

Any notice or other document to be given under this Agreement shall be in writing in the English language and sent by post or by email to the addresses set out in this Agreement, in the case of the Affiliate the address currently on record in the web-based Accreditation System for the Authorized Signatory, or such other address as either party shall notify to the other in writing for this purpose. Notices shall be deemed to be effective upon receipt by the party to which notice is given or within the 5<sup>th</sup> day following the mailing or transmission, whichever occurs first.

### **8.4 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.

### **8.5 Term and Termination**

8.5.1 This Agreement shall be dated and come into effect on the date of last signature of the parties hereto, and will expire only if explicitly terminated:

- a) At any time upon six (6) months' written notice by either Party to the other; or
- b) If a period of thirty (30) days has elapsed from one Party notifying the other Party of a breach of this Agreement or of the terms of the Accreditation Policy or Accreditation Requirements, and such a breach has not been rectified to the satisfaction of the other Party.
- c) Immediately upon the Certification Authority's discovery of a breach of Sub-clause 5.3.

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



**8.6 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.

**9. Execution**

By signing below, the Affiliate agrees to be bound by this Agreement, the Accreditation Policy, and the Accreditation Requirements.

AGREED by the Parties through their authorized signatories:

FOR AND ON BEHALF OF

FOR AND ON BEHALF OF

\_\_\_\_\_  
**The Affiliate**

**The Open Group**

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

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Please complete and email (scanned/PDF) or fax a signed copy of this document to legal@opengroup.org. The Open Group will countersign and return a fully executed copy to the email address or fax number provided above. If preferred, you may just complete, sign and send this signature page.  
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