

# The Open Group<sup>®</sup> Professional Certification Program Milestone Agreement

Version 1.0, January 2019

NOTE: The Milestone Agreement is accepted within the web-based certification system. This is a sample of the agreement that Candidates will need to accept during the process of achieving The Open Group Data Scientist Milestone Badges.

This Milestone Agreement ("Agreement") is made and entered into by and between the following Parties: The Open Group, L.L.C., a Delaware LLC ("The Open Group"), 800 District Avenue, Burlington, MA 01803-5007, United States of America, and you ("the Candidate").

Whereas, the Candidate wishes to apply for a Milestone Badge in The Open Group Professional Certification Program ("the Program"); and Whereas, the Candidate is uniquely defined in the Milestone Application Form; and Whereas, The Open Group is the Certification Authority operating the Program in accordance with the terms of The Open Group<sup>®</sup> Professional Certification Program 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:

<b>Candidate</b>	The individual who desires to obtain a Milestone Badge.
<b>Certification Policy</b>	The document "The Open Group Professional Certification Program Certification Policy", as amended from time to time by The Open Group, available at <a href="https://certification.opengroup.org/open-professions">https://certification.opengroup.org/open-professions</a> .
<b>Certification System Deficiency</b>	An agreed error in the certification system, which is inhibiting the certification process. A Certification System Deficiency is one possible outcome of a Problem Report.
<b>Certified Professional</b>	A person who has been notified in writing by the Certification Authority that they have successfully completed the process to achieve certification in the Program and such certification has not lapsed or been revoked.
<b>Configuration Document</b>	The applicable document "The Open Group Professional Certification Program Configuration Document" for the Profession in which Candidate is submitting a Milestone Application Form, as amended from time to time by The Open Group, available at <a href="https://certification.opengroup.org/open-professions">https://certification.opengroup.org/open-professions</a> .
<b>Conformance</b>	The applicable document "The Open Group Professional Certification Program

<b>Requirements</b>	Conformance Requirements” for the Profession in which Candidate is submitting a Milestone Application Form, as amended from time to time by The Open Group, available at <a href="https://certification.opengroup.org/open-professions">https://certification.opengroup.org/open-professions</a> .
<b>Evaluation Process</b>	The documented process by which the Certification Authority and Peer Review Board together determine whether a Candidate meets the Conformance Requirements.
<b>Evaluation Process Deficiency</b>	An agreed error in the Evaluation Process that is inhibiting the certification process. An Evaluation Process Deficiency is one possible outcome of a Problem Report.
<b>Interpretation</b>	Decision made by the Specification Authority that elaborates or refines the meaning of the Conformance Requirements, Certification Policy, Accreditation Policy, Accreditation Requirements, or a standard or best practice referenced therein. An Interpretation is one possible outcome of a Problem Report.
<b>Milestone</b>	A predefined subset of the Conformance Requirements, which can be evaluated as a group. Milestones are documented in each Profession’s Configuration Document.
<b>Milestone Application Form</b>	A Milestone Application Form is a template document provided by the Certification Authority to allow Candidates to describe how their experience meets the Profession’s Conformance Requirements required for a Milestone, as defined in the Profession’s Configuration Document. For each Profession, there are different Milestone Application Forms for each different type of Milestone.
<b>Milestone Badge</b>	The digital credential issued to a Candidate who has reached a Milestone.
<b>Peer Review Board</b>	The group of Certified Professionals appointed by the Certification Authority to evaluate one or more application(s) for certification.
<b>Person</b>	Includes a body of persons whether or not incorporated.
<b>Problem Report</b>	A question of clarification, intent, or correctness of an accreditation or certification document, or the web-based certification or accreditation systems, which, if accepted by the Certification Authority, will be resolved into an Interpretation, an Evaluation Process Deficiency, or a Certification System Deficiency.
<b>Profession</b>	A Profession is defined by a set of Conformance Requirements and the related Configuration Document – a group of related professional disciplines described in the Conformance Requirements and related Configuration Document.
<b>Specification Authority</b>	The Open Group working group(s) responsible for developing, maintaining, and interpreting the Certification Policy, Conformance Requirements, Accreditation Policy, and Accreditation Requirements of the Program and each of the Professions within it.

## **2. The Certification Authority's Obligations**

### **2.1 Certification**

The Certification Authority will provide a means for the Candidate's Milestone Application Form to be submitted.

The Certification Authority will check the Milestone Application Form to make sure the submitted information demonstrates that the Candidate meets the applicable Conformance Requirements.

Within 10 business days of receipt, the Certification Authority will carry out an initial review of the Milestone Application Form. If minor problems of completeness or consistency are found, the Certification Authority will notify the Candidate via electronic mail with a list of what is missing or inconsistent. The Certification Authority will give the Candidate an opportunity to make corrections and re-submit. Once the revised submission is received, the initial review will resume, with an additional 10 business day turnaround.

The Certification Authority will perform or arrange for a review, as defined in the Configuration Document for the Profession. If a Candidate is assigned to a Peer Review Board, Candidate may, with no less than 30 days notice, request a postponement to the next available Peer Review Board. Failure to attend the assigned Peer Review Board with less than 30 days notice will result in the application being terminated without any refund of fees.

The Certification Authority will contact the Candidate with the result of the Evaluation Process within 6 business days of receiving the Evaluation report from the Peer Review Board.

If the Evaluation report indicates that the applicable Conformance Requirements have been met, the Certification Authority will notify the Candidate via electronic mail of the successful evaluation and issue a Milestone Badge to the Candidate.

If the Evaluation indicates that the Conformance Requirements have not been met, the Certification Authority will notify the Candidate and provide reasons for the decision to decline the application.

### **2.2 Anonymity of Appeals**

In the event that the Candidate desires to appeal a decision made by The Open Group or the Peer Review Board by invoking the appeals process defined in the Certification Policy and wants the appeal to be anonymous, the Certification Authority will facilitate an anonymous review on behalf of the Candidate according to the Certification Policy.

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

In addition to the information provided as part of the registration process, the Candidate undertakes to answer all reasonable additional questions the Certification Authority or the Peer Review Board may raise.

The Candidate undertakes to cooperate with the Peer Review Board to undertake the Evaluation Process.

### **3.1 Registration and Payment of Milestone Badge Fee**

The Candidate must complete a web-based registration form, providing details about themselves and identifying the Milestone Badge, Profession, and level for which they are applying, and **must formally accept the terms of this Agreement, by clicking on the 'Accept' button below.**

Payment of the Milestone Badge fee must be by credit card at the time of registration or by other means agreed in advance by the Certification Authority, such as pre-payment by the Candidate's employer.

The Certification Authority will not start the review process until payment has been received.

### **3.2 Certification**

The Candidate agrees to provide a Milestone Application Form and all required supporting evidence to the Certification Authority and the Peer Review Board, along with references to all relevant Interpretations, Certification System Deficiencies, or Evaluation Process Deficiencies to explain any deviances from the requirements. The Candidate also agrees to comply with the Certification Authority's and the Peer Review Board's reasonable requests for clarification or rework regarding the completeness, correctness, or consistency of the provided information.

### **3.3 Warranty of Conformance**

By clicking the "Accept" button below, the Candidate hereby warrants and represents that he/she meets the applicable Conformance Requirements at the time of Milestone registration and will continue to meet the Conformance Requirements throughout the time in which they hold a Milestone Badge, in accordance with the Certification Policy. For the avoidance of doubt, any demonstrable shortfall with respect to the applicable Conformance Requirements is grounds for withdrawal of the Milestone Badge, whether or not that shortfall is apparent from the supporting evidence supplied and the review process itself.

## **4. Confidentiality**

- i. The Certification Authority shall, except where a provision of this Agreement provides otherwise, maintain in confidence all information the Candidate discloses to the Certification Authority in relation to this Milestone application. No license, express or implied, under any copyright is granted by the Candidate 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 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 Certification Authority's possession without obligation of confidence prior to its disclosure pursuant to this Agreement, or is subsequently independently developed by the Certification Authority's employees having no access to the information disclosed hereunder,
  - c. Is subsequently rightfully obtained without obligation of confidence by the Certification Authority from a source other than the Candidate 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. The Certification Authority may disclose the Candidate's confidential information to members of a Peer Review Board and any third-party providing certification related services to The Open Group, as authorized by the Candidate.
- iii. The Candidate acknowledges and accepts that the Certification Authority may make use of commercial third party printing and distribution services to make the Candidate's Milestone Application Form available to the members of the Peer Review Board.

## **5. Privacy**

The Candidate acknowledges and agrees that The Open Group collects certain personal information about the Candidate in order to operate and run the Program. The Open Group uses and protects that information as described in The Open Group Privacy Policy, available at <http://www.opengroup.org/privacy>. The Candidate agrees to such collection, processing, and transfer where required for The Open Group to deliver its obligations under this Agreement.

In addition, the Candidate also agrees that the certification the Candidate has earned and its Program activities may be tracked and associated with its personal information.

## **6. Liability and Indemnity**

### **6.1 Liability**

THE CANDIDATE 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 CANDIDATE 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, INCLUDING PEER REVIEW BOARD MEMBERS, 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**

The Candidate shall indemnify and hold harmless the Certification Authority together with its officers, servants, agents, subcontractors, and shareholders of the Certification Authority, Peer Review Board members, and their servants when engaged in activities on behalf of the Certification Authority 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 liability incurred from such demands, and claims arising out of the Candidate's supply of Profession related Services, provided that

- a. any such demand and claim is based on the Program under this Agreement and not caused by any criminal action, gross negligence or tort by the Indemnified,

- b. the Indemnified notifies the Candidate 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 Candidate, and
- c. the Candidate is given full authority and sole control to defend and settle any such demands and claims.

The Certification Authority 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.

## **7. General**

### **7.1 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 or referred to in this Agreement and no change may be made to this Agreement except in writing and signed by duly authorized representatives of both Parties.

### **7.2 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.

### **7.3 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 sent by post or by email to the addresses set out in this Agreement, or such other address as either party shall notify to the other in writing for this purpose. The specified address for the Certification Authority is the address set out above, and the specified addresses for the Candidate are those postal and email addresses provided in the Candidate's profile, as entered on The Open Group website. 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 mailing or transmission, whichever occurs first.

### **7.4 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.

## **7.5 Term and Termination**

This Agreement comes into effect at the date of acceptance 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, the obligations of non-disclosure in respect of any confidential information disclosed prior to such termination shall survive for a period of 5 years following such termination.

### **7.5.1 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.

## **8. Fees**

The Fees described at <https://certification.opengroup.org/open-professions> are quoted net of all applicable taxes and duties which, where appropriate, will be payable by the Candidate to the Certification Authority (or to the relevant tax authorities as applicable) in addition.

### **8.1 Payment**

The Certification Authority will charge the applicable fee upon submission of a completed Milestone Application Form. The Candidate agrees to incur the applicable fee for each application.

Fees are payable in U.S. dollars and will be debited against the credit card provided to the Certification Authority in the web-based payment system. Fees are non-refundable.

## **9. Execution**

**By clicking on the "Accept" button below, the Candidate:**

1. **Hereby acknowledges reading and understanding this agreement.**
2. **Agrees to be bound by the terms of the Certification Policy and this Milestone Agreement.**
3. **Warrants and represents that the Candidate as identified by the name defined in the Milestone Application Form meets the applicable Conformance Requirements.**
4. **Warrants that NO MATERIAL CHANGES have been made to this Agreement since it was made available to the Candidate by the Certification Authority in an electronic format;**

**and by clicking on the "Accept" button below, the Candidate agrees that all these obligations and those described in the Confidentiality and Indemnity clauses of this Agreement shall survive the termination of this Agreement.**