

The Open Group Certification for People Program Training Course Accreditation Agreement

February 2015, Version 1.4

This Training Course Accreditation 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”) and the entity described in the signature section of this Agreement (“Organization”). The Open Group and the Organization 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, which is to be executed once, is made for one or more training courses that Organization submits for Accreditation in The Open Group Certification for People Program and may include one or more Affiliates sponsored to deliver such training courses.
- 1.2 Each training course to be accredited shall be as identified in a fully executed Training Course Schedule incorporated into this Agreement. Together, this Agreement and the Training Course Schedule embody the entire agreement between the Parties relating to the training course identified in the Training Course Schedule.
- 1.3 Each affiliate to be sponsored to deliver or support the delivery of the Organization’s Accredited Training Courses (ATC) shall be as identified in a fully executed Affiliate Schedule incorporated into this Agreement. Together, this Agreement and the Affiliate Schedule embody the entire agreement between the Parties relating to the named Affiliate’s affiliation with the ATC identified in the Affiliate Schedule.
- 1.4 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:

Accreditation	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.
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Accreditation Agreement	The agreement between the Organization and the Certification Authority that defines the accreditation service to be provided and contains the legal commitment by the Organization to the conditions of the Accreditation Program.
Accreditation Logo	The trademarks and tag lines as designated from time to time by The Open Group for use in association with Accredited Training Courses.
Accreditation Policy	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.
Accreditation Register	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.
Accreditation Requirements	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.
Accreditation Trademark License Agreement (Accreditation TMLA)	The agreement between the Organization and The Open Group that contains the legal commitment by the Organization and its Affiliate(s) to the terms and conditions for use of the Accreditation Logo relating to the Organization's Accredited Training Course(s).
Accredited Training Course (ATC)	A training course, operated by a training course provider, that has successfully completed the Accreditation process and which is listed in the Accreditation Register.
Affiliate	A partner of an ATC Provider that delivers, or supports the delivery of, an Accredited Training Course on their behalf.
Affiliate Schedule	The Schedule containing the supplemental details that identify the Affiliate that the Organization agrees to sponsor for the delivery of the specified Accredited Training Course.
Assessment	An inspection of an Organization's training course training materials, processes, policies, and staff to determine the degree to which the training course is operating in accordance with the Accreditation Requirements.
Assessor	The individual or individuals who have been appointed by the Certification Authority to perform Assessments.
ATC Manager	The specific individual(s) identified within an ATC Provider as having the overall responsibility for managing the Accredited Training Course on a day-to-day basis and ensuring that it is carried out in accordance with its documented processes and procedures.
ATC Provider	A provider of training courses that offers at least one Accredited Training Course.

Broker	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.
Candidate Training Course	An Organization's training course that has not yet been accredited.
Certificate of Accreditation	A document issued to Organizations by the Certification Authority certifying that a training course has successfully met the requirements for Accreditation and thus is considered an Accredited Training Course.
Certification Authority (CA)	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.
Certification Policy	The applicable Certification Policy document identified in the Program Configuration document.
Certification System Deficiency (CSD)	An agreed error in the certification and/or accreditation systems that is inhibiting the certification or accreditation process. A Certification System Deficiency is one possible outcome of a Problem Report.
Conformance Declaration	The Organization's documented public representation of the course, including the responsible ATC Manager, scope of the course, and delivery information.
Interpretation (INT)	Decision made by the Specification Authority that elaborates or refines the meaning of the Conformance Requirements, Certification Policy, Accreditation Requirements, Accreditation Policy, or a standard or best practice referenced therein. An Interpretation is one possible outcome of a Problem Report.
Organization	A training course provider and Party to this Agreement that is applying for a training course to be accredited or that has one or more training courses that have achieved Accreditation. While the Organization is in the process of having a course accredited, the Organization may be referred to as an Applicant. Once an Organization has achieved Accreditation for at least one course, the Organization may be referred to as an ATC Provider.
Person	Includes a body of persons whether or not incorporated.
Problem Report (PR)	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 or a Certification System Deficiency.
Program	The Open Group Certification for People Program specifically identified in the Program Configuration document.
Registration Form	A web form completed by the Organization to register a Candidate Training Course for Accreditation or an Affiliate to deliver one of the Organization's Accredited Training Courses.

Schedule	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.
Specification Authority (SA)	The respective Open Group working group that is responsible for interpreting the Certification Policy, Conformance Requirements, Accreditation Policy, and Accreditation Requirements of the Program.
Training Course Schedule	The Schedule containing the supplemental details that identify the training course that the Organization would like to accredit in the specified Program.

3. The Organization's Obligations

The Organization will perform all of the actions required of the Organization in the Accreditation Policy, and will promptly communicate all information required by the Certification Authority as defined in the Accreditation Policy. In particular, the Organization is responsible for ensuring that the names and contact information for all contacts specified in the web-based accreditation system are up-to-date. Changes to such information may either be made in the web-based accreditation system itself or by notifying the Certification Authority.

3.1 Registration and Payment of Accreditation Fees

- 3.1.1 The Organization must complete a Registration Form, thoroughly defining the Candidate Training Course to be accredited.
- 3.1.2 The Organization must formally accept the terms of this Agreement by having an authorized person sign below, if not previously executed, and execute a Training Course Schedule corresponding to the Candidate Training Course.
- 3.1.3 The Organization must authorize payment of the applicable Accreditation fees when due. 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 accreditation process until payment has been received.
- 3.1.4 The Accreditation fee covers only one resubmission of information to the Certification Authority. A further fee may apply for additional resubmissions.

3.2 Documentation Assessment

- 3.2.1 The Organization undertakes to designate an ATC Manager to coordinate with and support the Assessor performing the Assessment. The Organization agrees to provide the Assessor with access to the ATC Manager and other relevant employees for the purpose of assessing the Candidate Training Course's conformance with the Accreditation Requirements.
- 3.2.2 In addition to the accreditation-related information provided as part of the Accreditation and Assessment process, the Organization undertakes to answer all additional questions reasonably related to Accreditation that the Certification Authority or the Assessor may raise, and to make available for inspection all documentation and other information reasonably related to the Candidate Training Course's conformance with the Accreditation Requirements.
- 3.2.3 The Organization agrees to provide all required supporting evidence to the Certification Authority and the Assessor, along with references to all relevant Interpretations or Certification System Deficiencies to explain any deviances from the requirements.

- 3.2.4 The Organization agrees to comply with the Certification Authority's and the Assessor's reasonable requests for clarification or rework regarding the completeness, correctness or consistency of the provided information and documentation.

3.3 On-Site Assessment

- 3.3.1 The Organization will provide the Certification Authority's designated on-site Assessor with attendance at an ATC at a time and place to be mutually agreed within six (6) months of Accreditation and thereafter when requested by the Certification Authority.
- 3.3.2 The Organization will not require any training fees to be paid in respect of the on-site Assessor.
- 3.3.3 The Organization will not be required to pay for any examination vouchers or certification fees in respect of the on-site Assessor.

3.4 Warranty of Conformance

- 3.4.1 By signing this Agreement below, the Organization hereby warrants and represents that the Candidate Training Course identified in the Registration Form, meets the Accreditation Requirements at the time of Accreditation and, after achieving Accreditation, the ATC will continue to meet the Accreditation Requirements throughout the duration of Accreditation, in accordance with the Accreditation Policy.
- 3.4.2 If the Organization fails to ensure continued conformance with the Accreditation Requirements, the Certification Authority may revoke the Accreditation for the ATC, in accordance with the Accreditation Policy. For the avoidance of doubt, any demonstrable shortfall with respect to the Accreditation Requirements is grounds for withdrawal of Accreditation, whether or not that shortfall is apparent from the supporting evidence supplied and the Accreditation process itself.
- 3.4.3 In addition, the Organization warrants and represents that the ATC as delivered through its Affiliate(s) (if any) meets and continues to meet the Accreditation Requirements for so long as the Affiliate(s) remain listed in the Accreditation Register. If the Affiliate fails to deliver the ATC in accordance with the Accreditation Requirements, the Certification Authority will revoke the Affiliate's rights with respect to the ATC and may revoke the Accreditation for the ATC, in accordance with the Accreditation Policy.

3.5 Duration of Accreditation, Renewal of Accreditation, and Re-Accreditation

- 3.5.1 Accreditation is valid for periods of 36 months (the "Accreditation Period") from the date at which the Certification Authority provides written notice to the Organization that Accreditation has been achieved (the "Accreditation Date"), unless removed in accordance with the Accreditation Policy. During the Accreditation Period, the Organization shall renew the Accreditation annually by the anniversary of the Accreditation Date. Renewal of Accreditation consists of payment of the annual fee, re-commitment to the terms of this Agreement, and re-confirmation that the requirements in the Accreditation Policy and Accreditation Requirements are being met. Failure to complete the renewal process will result in the removal of the ATC from the Accreditation Register.
- 3.5.2 The Organization must pay the accreditation fee published by The Open Group prior to the anniversary of the Accreditation Date.
- 3.5.3 The last day of each Accreditation Period is referred to as the re-accreditation date, after which time Accreditation ceases to be valid, unless extended in accordance with the re-accreditation process defined in the Accreditation Policy.
- 3.5.4 To extend Accreditation for another 36-month period, the Organization shall abide by the terms of the re-accreditation process defined in the Accreditation Policy. For the avoidance of doubt, failure to respond within thirty (30) calendar days to the Certification Authority's notice of re-accreditation with an indication that the Organization would like its ATC re-accredited will be deemed a withdrawal, and the Accreditation will expire on the re-accreditation date, resulting in removal from the Accreditation Register. Likewise, failure to complete the re-accreditation process within the applicable period

prescribed by the Accreditation Policy will result in removal of the ATC from the Accreditation Register.

3.6 Examination Vouchers and Certification Fees

3.6.1 Examination vouchers are an integral part of the ATC Program. In advance of delivery of each ATC, and for each ATC attendee, the Organization or its Affiliate(s) must buy an appropriate examination voucher from the Certification Authority or its designated supplier of examination vouchers.

3.6.2 The Organization 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.**

3.6.3 The Organization will not offer an Accredited Training Course at a fee that excludes the examination voucher.

3.6.4 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, the Organization will pay the Certification Authority the applicable fee for each course attendee, in advance of delivery of the ATC.

3.6.5 The Organization will provide a quarterly statement of vouchers purchased by the Organization and its Affiliates in accordance with the Accreditation Requirements.

3.7 Trainers and Proctors

3.7.1 The Organization must ensure all trainers used in an ATC, whether delivered by the Organization itself or an Affiliate, have the relevant qualifications.

3.7.2 The Organization must maintain a list of all of its own and its Affiliates' trainers, including names, contact details, training qualifications, and certification status, and must make this list available to The Open Group promptly upon request.

3.7.3 If examinations are available as an integral part of the ATC, as allowed for in the Program, the Organization must ensure that in advance of proctoring an examination:

- The proctor has a fully executed The Open Group Examination Proctor Non-Disclosure Agreement in place.
- The proctor has passed the proctor test, which is used to verify that the proctor can properly interact with the Examination Provider's system in order to administer the test for candidates.
- The proctor has been registered as a proctor with the Certification Authority.

3.7.4 The Organization is at all times responsible for its proctor's adherence to the Requirements for IBT Examination Supervisors.

3.7.5 The Organization must maintain a list of its proctors with the Certification Authority and promptly notify the Certification Authority of any changes in proctor eligibility, including a proctor no longer being employed or contracted by the Organization.

3.8 Affiliates and Brokers

3.8.1 If the Organization wishes to sponsor an Affiliate to deliver its ATC, the Organization must execute an Affiliate Schedule as part of this Agreement, register the Affiliate with the Certification Authority, pay or ensure payment of the applicable fees, and submit the applicable accreditation documents for assessment by the Certification Authority in accordance with the Accreditation Policy.

- 3.8.2 If the Organization is a licensee of Open Group course material, then the Organization will execute a side letter to the Training Course Material Agreement with The Open Group that gives permission for the licensed course materials to be made available for each named Affiliate.
- 3.8.3 The Organization is at all times responsible for its Affiliates' compliance with the trademark usage guidelines in the Accreditation Trademark License Agreement with respect to promotional material for their 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.
- 3.8.4 The Organization is responsible for ensuring that its Affiliate follows the Accreditation Policy and that the Accreditation Requirements are met in full. For the avoidance of doubt, this shall include but not be limited to ensuring
- The competence of the Affiliate trainers.
 - That the Affiliate delivers the course(s) correctly.
 - That the Affiliate's Quality Management System is operated correctly.
 - That examination vouchers are ordered as required and provided to all attendees.
 - That any integral exams are proctored only by the sponsor ATC Provider's proctors who have been registered with the Certification Authority.
 - That the ATC Manager's responsibility extends to the ATC course delivered by the Affiliate.
 - That the affiliation applies only to the named Accredited Training Course and if the course ceases to be accredited, ensuring that the Affiliate does not deliver the course.
- 3.8.5 The Organization is at all times responsible for its and its Affiliates' 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.
- 3.8.6 The Organization must ensure that any Broker, which the Organization or its Affiliates engages to promote their accredited courses, 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.
- 3.8.7 The Organization may be requested to identify its Brokers to the Certification Authority.

3.9 Additional Delivery Languages and Delivery Methods

- 3.9.1 The Organization may at any time apply to modify the Conformance Declaration for an ATC to add a new delivery language requiring translation of course materials or a new delivery. Such request must be made at least two (2) weeks prior to first use of the ATC in the new delivery language or method.
- 3.9.2 The Organization must submit any translated or modified course materials to the Certification Authority and must pay the applicable fees.
- 3.9.3 The Organization is required to enable on-site assessment of the new delivery language or method by the Certification Authority's assessor as described in clause 3.3 above.

4. The Certification Authority's Obligations

4.1 Accreditation

- 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 of the Registration Form, audit all accreditation-related information provided by the Organization, including supporting

evidence, and check that the submitted information is complete and well-formed. If an incomplete or poorly-formed submission is received, the Organization will be notified within ten (10) business days via electronic mail with a list of all the missing, incomplete or poorly formed items, and will be invited to re-submit the Registration Form. Once the revised submission is received, the initial audit will resume, with an additional ten (10) business days turnaround time.

- 4.1.3 After a complete and well-formed submission is received, the Certification Authority's designated Assessor will perform the documentation Assessment within ten (10) business days.
- 4.1.4 The Certification Authority will contact the Organization with the result of the documentation Assessment within six (6) business days of receiving the Assessment report from the Assessor.
- 4.1.5 If the Assessment report indicates that the Accreditation Requirements have been met, the Certification Authority will notify the Organization via electronic mail that Accreditation has been achieved.
- 4.1.6 If the Assessment report indicates that there are any significant deficiencies with respect to the Accreditation Requirements, the Certification Authority will notify the Organization of the deficiencies, which must then be corrected within sixty (60) calendar days. Accreditation will not be granted until any such deficiencies have been corrected to the Certification Authority's satisfaction.
- 4.1.7 If the Assessment report indicates that there are only minor deficiencies with respect to the Accreditation Requirements, the Certification Authority will notify the Organization of the deficiencies and will grant Accreditation subject to the minor deficiencies being corrected within sixty (60) calendar days. Such Accreditation may be revoked in the event that the Organization does not correct such deficiencies within sixty (60) calendar days, to the satisfaction of the Certification Authority.
- 4.1.8 Within six (6) months of the achievement of Accreditation, the Assessor will schedule an on-site audit of the delivery of the ATC. The on-site audit will be performed by a member of the Certification Authority's staff or by a third party appointed by the Certification Authority for this purpose.
- 4.1.9 The Certification Authority will communicate the report of the on-site audit to the Organization. The report will list:
 - any major deficiencies that must be addressed within sixty (60) days or Accreditation will be revoked, and
 - any minor deficiencies and the time by which they must be corrected.

4.2 Additional Languages and Delivery Methods

- 4.2.1 If the Organization makes a request to the Certification Authority to update the Accreditation for an existing ATC to add a new delivery language that involves translated course materials or a new delivery method for the ATC, the Certification Authority will carry out a documentation assessment of any translated course materials. If the Certification Authority does not find any non-conformances, they will add the new delivery language or delivery method to the Conformance Declaration for the ATC.
- 4.2.2 The Certification Authority may also add the new delivery language or delivery method to the schedule of on-site assessments for that ATC.

4.3 Duration of Accreditation, Renewal of Accreditation, and Re-accreditation

The Certification Authority will send a notice by electronic mail to the Organization:

- at or before sixty (60) days prior to the anniversary of the accreditation, and
- at or before ninety (90) days prior to the re-accreditation date, as prescribed in the Accreditation Policy.

4.4 Anonymity of Appeals

In the event that the Organization 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 Organization. **The Organization is responsible for maintaining its anonymity in all material submitted to the Certification Authority in support of its appeal.**

4.5 Affiliates

The Certification Authority will perform the steps in Sub-clauses 4.1.1 to 4.1.7 with respect to a request by an Organization to add an Affiliate to an ATC. All notifications will be provided to both the Organization and the Affiliate. Upon successful completion of the affiliation process, which includes a fully executed Affiliate Schedule, the Certification Authority will add the Affiliate to the Accreditation Register entry for the ATC.

5. Confidentiality

- 5.1 The Certification Authority shall, except where a provision of this Agreement provides otherwise, maintain in confidence all information the Organization discloses to the Certification Authority in relation to this Accreditation. No license, express or implied, under any trademark or copyright is granted by the Organization 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 the Organization 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 Information regarding an Assessment report shall not be disclosed in any publicly available document or to any third party by the Certification Authority, the Organization, or any party acting on the Organization's behalf.
- 5.3 The Certification Authority may disclose the Organization's confidential information to those of its employees and contractors who reasonably require access to such information. The Certification Authority may also disclose the Organization'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 the Organization's confidential information with the third party. However, the Certification Authority may not disclose the Organization'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 the Organization's confidential information to the Organization's employees, or employees of any party acting on the Organization's behalf.

- 5.4 To enable the Organization to keep the fact of Accreditation confidential for a period of up to six (6) months from the date of written notice by the Certification Authority that the Candidate Training Course has achieved Accreditation, the Organization's identity, the fact of Accreditation, and the name of the ATC (the Accreditation Information) will be kept subject to the disclosure and use restrictions set out in this clause. During this period, the Organization may not publicly claim that the ATC is or has been Accredited, or make any representation of the ATC's conformance with the Program's Accreditation Requirements without first informing the Certification Authority that the confidential period has expired. Accreditation Information will cease to be held confidential upon the earlier of notice by the Organization that the confidential period has expired or at the end of the six-month period, provided that the Organization has not requested withdrawal and deletion of such information.
- 5.5 Except for disclosure to the Certification Authority for the purpose of Accreditation, the results of the Assessment process and any other information about the ATC that is obtained during the Assessment process shall be held confidential.
- 5.6 The Organization agrees to keep confidential any and all information that comes into its possession regarding the Program's examinations. If the Organization 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 remove all of the Organization's ATCs and Affiliates from the Accreditation Register.
- 5.7 Where the Organization engages an Affiliate to deliver or support the delivery of its ATC, such engagement will obligate confidentiality terms equivalent to those appearing in this Clause 5. If the Affiliate is found to have breached the confidentiality terms of this Clause 5, The Open Group may, at its discretion, terminate this Agreement.

6. Liability and Indemnity

6.1 Liability

THE ORGANIZATION 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 ORGANIZATION 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 Organization 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 Organization’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 Organization, provided that the claim arises out of:

- a) Allegations that the Organization’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 Organization or its Affiliate; and/or
- c) The Organization’s or its 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 Organization on the express instructions of The Open Group, and
- b) The Organization (together with any other ATC Provider and/or 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 Organization’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 website and are quoted net of all applicable taxes and duties that, where appropriate, will be payable in addition by the Organization to the Certification Authority or to the relevant tax authorities as applicable.
- 7.2 The Certification Authority will charge the applicable Accreditation fee upon receipt of a completed registration and annually thereafter.
- 7.3 Fees for the addition of delivery languages or delivery methods will be charged at the time of their notification to the Certification Authority, pro-rated by the number of whole months until the next anniversary of the Accreditation date of the ATC to which they apply, and annually thereafter.

- 7.4 Fees for Affiliates will be charged at the time of their registration with the Certification Authority, pro-rated by the number of whole months until the next anniversary of the Accreditation date of the ATC to which they apply, and annually thereafter.
- 7.5 Fees for examination vouchers will be charged upon receipt of a request for vouchers.
- 7.6 Fees are payable U.S. dollars.
- 7.7 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 \$1000 U.S. dollars must be paid by credit card.
- 7.8 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 Organization 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 5th 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

This Agreement comes into effect upon 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; or
- c) Immediately upon the Certification Authority's discovery of a breach of Sub-clause 5.6.

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 Organization 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 Organization

The Open Group

 Signed

 Signed

 Name

 Name

 Title

 Title

 Date

 Date

Facsimile Number: _____

Facsimile Number: +1 240 250 6102

Email: _____

Email: legal@opengroup.org

Address: _____

8 New England Executive Park

Burlington, MA 01803-5007

United States of America

 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.