

# The Open Group Certification for People Accreditation Trademark License Agreement

August 2022, Version 1.4

This Accreditation Trademark License 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 ("Licensee" or "Affiliate Licensee"). The Open Group and the Licensee or Affiliate Licensee are sometimes referred to herein as a "Party" or "the Parties".

## WHEREAS:

1. The Open Group is the proprietor of certain Trademarks.
2. The Licensee is an ATC Provider having at least one Accredited Training Course and the Affiliate Licensee is the ATC Provider's partner entity registered to deliver or support the delivery of the ATC Provider's Accredited Training Course.
3. The Licensee or Affiliate Licensee wishes to use said Trademarks on and in relation to the ATC Provider's Accredited Training Course, when such course meets the Standards of Quality.
4. The Open Group is willing to permit the Licensee or Affiliate Licensee to use said Trademarks as aforesaid, subject to the provisions of this Agreement.

## THE PARTIES THEREFORE AGREE as follows:

### 1. Definitions

As used in this Agreement, the terms "The Open Group", "Licensee", "Affiliate Licensee", "Party" and "Parties" will have the meanings indicated above. Additional defined terms are as follows:

#### 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.

#### 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 and, for purposes of this Agreement, is the Affiliate Licensee.

#### ATC Provider

A provider of training courses that offers at least one Accredited Training Course and, for purposes of this

Agreement, is the Licensee.

**Broker**

An advertising, promotions and/or marketing entity that enters into a commercial contract with an ATC Provider or an Affiliate to advertise, promote and/or market the Accredited Training Course.

**Certification Authority**

The organization that manages the day-to-day operations of the Program in accordance with the policies defined in the Accreditation Policy, including any third party acting on behalf of the Certification Authority. The Open Group is the Certification Authority for the Program.

**Excluded Countries**

Those countries (if any) set out Appendix B (as amended from time to time in accordance with Sub- clause 2.2 below) in which the Licensee or Affiliate Licensee is not permitted to use the Trademarks.

**Person**

Includes a body of persons whether or not incorporated.

**Program**

The Open Group Certification for People program specifically identified in The Open Group Certification for People Program Configuration.

**Restricted Countries**

The countries (if any) listed in Appendix B (as amended from time to time in accordance with Sub- clause 2.2 below) in which the Licensee or Affiliate Licensee is permitted to use the Trademarks pursuant to the conditions set forth on said Appendix.

**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 the identified Accredited Training Course in the Schedule.

**Standards of Quality**

The applicable requirements set forth in the Accreditation Policy and Accreditation Requirements of the Program.

**Territory**

Those countries as set out in Appendix B, Paragraph 3, as amended from time to time in accordance with this Agreement, and any other countries in which The Open Group has rights in the Trademarks other than through registration, or any one or more of them as the context requires.

**Trademarks**

The Trademarks described in Appendix A, whether registered or not.

**Trademark License Schedule**

The Schedule containing the supplemental details relating to the specific Trademark (Accreditation Logo) that is licensed.

**Trademark Usage Guide**

The set of rules attached as Appendix C hereto describing the form and manner in which the Trademarks, specific to the identifying details in Trademark License Schedule, are to be used by Licensee or Affiliate Licensee (subject to any specific reasonable interpretation by The Open Group in individual cases), as amended or revised from time to time by The Open Group in accordance with Clauses 5 and 18 below.

**2. License**

**2.1 License Grant**

In consideration of the payments to be made in accordance with Clause 8 (Fees) and subject to Clause 4 (Standards of Quality), Appendix C (Trademark Usage Guide), and the other provisions of this Agreement, The Open Group hereby grants to the Licensee or Affiliate Licensee a non-exclusive, non-transferable (without any right to sublicense) license to use the Trademarks in the Territory on, or in relation to, the Accredited Training Course that the Licensee or Affiliate Licensee is registered to deliver, or support the delivery of, as specified in the Trademark

License Schedule, including without limitation use in informational, marketing and promotional materials in all media formats.

## **2.2 Restricted and Excluded Countries**

The Open Group may give notice to the Licensee or Affiliate Licensee from time to time that a country, jurisdiction or territory should be added to the list of Restricted Countries and/or Excluded Countries where it appears or is claimed that the use of the Trademarks in such country, jurisdiction or territory infringes the rights of any third party or parties; or the law of that country, jurisdiction or territory requires compliance with any specified formality that The Open Group reasonably determines to be an excessive burden.

## **2.3 License Restrictions**

Save as otherwise expressly authorized in writing by The Open Group, the Licensee or Affiliate Licensee shall not use the Trademarks other than in accordance with the provisions of this Agreement (including its Appendices and Schedules).

## **3. Duration**

This Agreement, and the licenses hereby granted, shall commence on the date of countersignature by The Open Group and shall, unless terminated in any of the circumstances of Clause 9 of this Agreement, continue in force:

- a. In the case of each license granted hereunder in respect of each of the Trademarks, for so long as The Open Group, its licensees, successors or its assigns continue to use the Trademark; and
- b. In the case of this Agreement, until the cessation of The Open Group or its licensees', successors' or assigns' continued use of the last of the Trademarks.

## **4. Standards of Quality**

### **4.1 General Obligation**

All Accredited Training Courses supplied by, directly or indirectly, or developed for or by the Licensee under or by reference to the Trademarks shall comply with the Standards of Quality, and the Licensee is obliged to adhere to the Accreditation Policy. **The Licensee hereby warrants and represents that each of its Accredited Training Courses meets the applicable conformance requirements identified in the Accreditation Policy and Accreditation Requirements, whether delivered by Licensee or its Affiliates. The Affiliate Licensee hereby warrants and represents that it shall at all times abide by the terms and conditions of the Accreditation Policy and Accreditation Requirements and that its delivery of each Accredited Training Course with which it is affiliated meets the Accreditation Requirements.**

### **4.2 Assessment**

The Program requires each training course to undergo assessment in order to achieve accreditation. The Certification Authority shall retain records of such assessment as defined in the Accreditation Policy. The results of the assessment and the report of audit thereof, shall be treated as confidential for the purpose of Clause 12.

### **4.3 Continued Compliance with the Standards of Quality**

The Licensee shall be obliged to check all changes to their Accredited Training Courses (whether to training course materials for defect corrections, new delivery methods or languages, or otherwise, quality management system, trainers, ATC Managers, or Affiliates), to ensure that all of their Accredited Training Courses continue to meet the Standards of Quality. In the event that an Accredited Training Course ceases to qualify as an Accredited Training Course and is removed from the Accreditation Register, the Licensee and Affiliate Licensee shall at their expense immediately cease to use the Trademarks whatsoever on or in relation to that course, including but not limited to use in all existing and future training course materials, websites, marketing collateral, and other materials.

### **4.4 Application of Trademarks**

Pursuant to the license granted under Clause 2 above, and notwithstanding the general obligation under Sub-clause 4.1 above, as identified in the Trademark License Schedule, the Trademarks may only be applied to the Accredited Training Courses accredited under the Program which the Licensee and Affiliate Licensee are registered to deliver or support the delivery of.

### **4.5 Accreditation Details to be Made Available Whenever the Trademarks are Used**

Whenever the Trademarks are displayed on or in relation to Accredited Training Courses in accordance with this Agreement, the Licensee and Affiliate Licensee must use the relevant attribution statement in connection with such use as prescribed in the Trademark Usage Guide.

## **5. Use of the Trademarks**

### **5.1 Trademark Use Guide**

The Licensee and Affiliate Licensee may only use the Trademarks in accordance with the Trademark Usage Guide amended from time to time in accordance with Clause 18.

### **5.2 Trademark Reputation**

The use of the Trademarks by the Licensee and Affiliate Licensee shall at all times be in keeping with their distinctiveness and reputation as determined by The Open Group as set forth in this Agreement, and the Licensee and Affiliate shall forthwith cease any use not consistent therewith as set forth in this Agreement.

### **5.3 Licensee or Affiliate Licensee Registration of Trademarks Prohibited**

The Licensee or Affiliate Licensee shall not use, register, or apply to register any mark or name identical to or confusingly similar to the Trademarks in respect of any goods or services.

### **5.4 Trademark License Limited**

Nothing contained in this Agreement shall entitle the Licensee or Affiliate Licensee to use or register the Trademarks as part of any corporate, business, trading, or domain name of the Licensee or Affiliate Licensee, or to use the Trademarks outside the Territory.

### **5.5 Licensee or Affiliate Licensee Statements**

The Licensee or Affiliate Licensee shall not intentionally, in any written material or otherwise, make any reference to or use of the Trademarks in such a manner as may lead the reader thereof to believe that the Licensee or Affiliate Licensee is licensed to apply the Trademarks to any training course which is not an Accredited Training Course at the time such reference is made.

## **6. Ownership of the Trademarks**

### **6.1 Trademark Owner**

The Open Group is the proprietor of the Trademarks and of applications for registration of the Trademarks in various countries and warrants that it has the right to grant the licenses granted hereunder. It is not aware at the date hereof that the Trademarks or the use of them on or in relation to the Accredited Training Courses in the Territory infringes the rights of any third party but gives no warranty in relation thereto or as to the validity of any of the applications or registrations.

### **6.2 No Contest to Trademarks**

During the term of this Agreement and thereafter, the Licensee or Affiliate Licensee undertakes not to do or permit to be done any act which would or might jeopardize or invalidate the Trademarks, their applications, and/or their registrations, nor to do any act which might assist or give rise to an application to remove the Trademarks from any national register or which might prejudice the right of The Open Group to the Trademarks. Furthermore, the Licensee or Affiliate Licensee will not object to or otherwise contest The Open Group's exclusive right, title and interest in and to, or the validity of, the Trademarks.

### **6.3 Licensee or Affiliate Licensee Assistance in Maintaining Trademarks**

The Licensee or Affiliate Licensee shall on request give to The Open Group or its authorized representative any information as to its use of the Trademarks which The Open Group may reasonably require and will (subject to the provisions of Clause 7 below) render any (non-monetary) assistance reasonably required by The Open Group in maintaining the applications, registrations, and/or common law rights of the Trademarks. Such information shall be subject to the provisions of Clause 12 below where applicable.

### **6.4 Goodwill of Trademarks**

The Licensee or Affiliate Licensee shall not make any representation or do any act which may be taken to indicate that it has any right, title, or interest in or to the ownership or use of the Trademarks except under the terms of

this Agreement and acknowledges that nothing contained in this Agreement or done pursuant to this Agreement shall give the Licensee or Affiliate Licensee any right, title, or interest in or to the Trademarks. To the extent that any use of the Trademarks by the Licensee or Affiliate Licensee in any part of the Territory may result in a development of goodwill in the Trademarks in that part of the Territory, such goodwill shall inure to the sole benefit of and be on behalf of The Open Group. Upon termination of this Agreement for any reason, all rights in the Trademarks will automatically revert to The Open Group. The Licensee or Affiliate Licensee will at any time execute any documents reasonably required by The Open Group to confirm The Open Group's ownership of all such rights.

#### **6.5 Licensee or Affiliate Licensee Cooperation in Recording Licenses**

Subject to the Licensee or Affiliate Licensee complying with its obligations under this sub-clause and Sub-clause 8.1 below, The Open Group may wherever required to do so by local laws in any part of the Territory record the Licensee or Affiliate Licensee as a Licensee or Affiliate Licensee or registered user of the Trademarks. The Licensee or Affiliate Licensee shall at The Open Group's request assist The Open Group as may be necessary (including by executing necessary documents including registered user agreements) for recording the Licensee or Affiliate Licensee as a registered user of the Trademarks in any part of the Territory, and the Licensee or Affiliate Licensee hereby agrees that each such recordation may be cancelled by The Open Group upon any termination of this Agreement in accordance with its terms, and that it shall assist The Open Group so far as may be necessary to achieve such cancellation including by executing necessary documents.

At the Licensee's or Affiliate Licensee's request The Open Group shall take all necessary steps to record such licenses with the regulatory authorities in countries where such registration is required or desirable, and the Licensee or Affiliate Licensee is responsible for reimbursing The Open Group all fees and expenses in connection therewith.

#### **6.6 On-Going Trademark Registrations**

The Open Group shall, subject to the Licensee's or Affiliate Licensee's cooperation, use its reasonable efforts to renew any registrations for the Trademarks already registered, and to procure registrations for applications of the Trademarks. The Open Group will add to the Territory any registrations of the Trademarks that are completed in additional countries. However, subject to Sub-clause 18.1 below, The Open Group may at any time remove a country from the Territory for legal or justifiable commercial reasons.

### **7. Infringements**

#### **7.1 Infringements of the Trademarks**

The Licensee or Affiliate Licensee shall immediately notify The Open Group in writing if the Licensee or Affiliate Licensee becomes aware of any unauthorized use, or proposed unauthorized use, by any Person of a trade name, trademark, or trade dress of goods or mode of promotion or advertising, which is identical or confusingly similar to Trademarks, and The Open Group may elect, in its discretion, to

- a. Take action against such Person, at its sole expense, in its own name or in the name of Licensee or Affiliate Licensee or join the Licensee or Affiliate Licensee as a party, as it in its sole discretion deems required, and to retain all amounts awarded as damages, profits or otherwise in connection with such action; or,
- b. Grant the Licensee or Affiliate Licensee the right to take such action, at the Licensee's or Affiliate Licensee's own expense, and by attorneys of the Licensee's or Affiliate Licensee's choice, as the Licensee or Affiliate Licensee in its sole discretion may deem advisable, including the right to sue for infringement. Any such action taken by the Licensee or Affiliate Licensee may be taken in the name of The Open Group or the Licensee or Affiliate Licensee, as the Licensee or Affiliate Licensee deems appropriate. The monetary proceeds from any such action, claim or settlement arising from any such action, will belong exclusively to the Licensee or Affiliate Licensee after the deduction of all of The Open Group's own costs incurred as a result of such proceedings, if any.

Subject to the terms of this Clause 7, the Licensee or Affiliate Licensee shall not be entitled to bring any action for infringement under any provisions of the laws of any jurisdiction enabling licensees to bring proceedings for infringement of Trademarks PROVIDED ALWAYS that nothing herein shall be deemed to remove from the Licensee or Affiliate Licensee any right to bring such proceedings which may not under any relevant country's laws be excluded by agreement between a licensor and licensee.

## **7.2 Infringement of Third-Party Marks**

If the Licensee or Affiliate Licensee becomes aware that any Person alleges that the Trademarks are invalid or if either party hereto becomes aware that any Person alleges that use of the Trademarks infringes any rights of another party, the Licensee or Affiliate Licensee or The Open Group, as appropriate, shall immediately notify the other party. The Licensee or Affiliate Licensee shall make no comment or admission to any third party in respect thereof except pursuant to any judicial order binding upon it.

## **7.3 Cooperation**

The Licensee or Affiliate Licensee shall at the request of The Open Group cooperate with The Open Group in any action, claim, or proceedings brought or threatened in respect of the Trademarks and The Open Group shall meet any reasonable expenses incurred by the Licensee or Affiliate Licensee to third parties in giving such assistance. Where the Licensee or Affiliate Licensee requests The Open Group to bring proceedings which The Open Group would not otherwise bring in any part of the Territory, the Licensee or Affiliate Licensee shall be consulted at all significant stages of such proceedings and shall meet The Open Group's costs associated with the bringing of such proceedings. In the event of the successful prosecution of such proceedings The Open Group shall remit to the licensee any resulting damages recovered by it after the deduction of all of The Open Group's own costs incurred as a result of such proceedings. Notwithstanding the above, it shall be at The Open Group's sole discretion whether or not any proceedings are brought or continued.

## **8. Fees**

The Licensee or Affiliate Licensee shall pay The Open Group the payments described in the Fees schedule published from time to time by the Open Group, listed on the Certification Authority's website.

All fees are quoted net of all other applicable taxes and duties which where appropriate will be payable to The Open Group (or to the relevant tax authorities as applicable) by the Licensee or Affiliate Licensee in addition.

### **8.1 Special Registration Fees**

Where the Territory specified includes any of the countries referred to in Appendix B, Paragraph 1, there may be additional charges which shall be fixed from time to time so as to cover The Open Group's costs of registering the Licensee or Affiliate Licensee in those countries as a licensee under the Trademarks. Special Registration fees are due upon execution of the Agreement.

### **8.2 Payment**

Amounts payable hereunder shall be paid in full without deduction of income or other taxes, charges, and duties that may be imposed except insofar as the Licensee or Affiliate Licensee is required to deduct the same to comply with applicable laws. The Open Group and the Licensee or Affiliate Licensee shall cooperate in all respects and take all steps necessary:

- a. To lawfully avoid the making of such deduction, and
- b. To take advantage of such double taxation agreements as may be available.

In the event that the Licensee or Affiliate Licensee is required to make any such deduction it shall provide The Open Group with a certificate or other documentary evidence to enable The Open Group to obtain appropriate relief from double taxation of such payment.

Payments are payable in U.S. dollars by check or by wire transfer to the bank account notified by The Open Group from time to time, bank or other charges to be borne by the Licensee or Affiliate Licensee. Payment shall be made within forty-five (45) days of the due date. The Open Group may charge the Licensee interest on any payment not made within forty-five (45) days of the due date on a daily basis until the date of receipt of such payment by The Open Group at a rate equivalent to two (2%) per cent above the base lending rate of Barclays Bank PLC in London from time to time.

If at any time during the continuation of this Agreement the Licensee or Affiliate Licensee is prohibited from making any of the payments required hereunder by a governmental authority in any country then the Licensee or Affiliate Licensee shall within the prescribed period for making the said payments in the appropriate manner use its best endeavors to secure from the proper authority in the relevant country permission to make the said payments and will make them within seven days of receiving such permission. In the event that such permission is not received within thirty (30) days of the Licensee or Affiliate Licensee making such a request for permission

then, at the option of The Open Group the Licensee or Affiliate Licensee shall deposit the payments due in the currency of the relevant country either in a bank account designated by The Open Group within such country, or such payment shall be made to an associated company of The Open Group designated by The Open Group and having offices in the relevant country.

## **9. Termination**

### **9.1 Termination By Either Party for Uncured Material Breach**

Either party may terminate this Agreement without prejudice to its other remedies forthwith by notice, as required in this Agreement, in writing to the other if the other party commits any material breach of this Agreement; provided that, if the breach is capable of remedy within ninety (90) days, the termination notice shall only be given if the party in breach shall not have remedied the same within ninety (90) days of having been given notice in writing specifying the breach and requiring it to be remedied.

For the avoidance of doubt, persistent breach by Licensee or Affiliate Licensee of the Trademark Usage Guide shall constitute a material breach of this Agreement. Other examples of material breaches shall include, but are not limited to: (i) Licensee's or Affiliate Licensee's use of the Trademarks inconsistent with the license granted under this Agreement, or otherwise contrary to the provisions of this license; (ii) Licensee's or Affiliate Licensee's challenge to The Open Group's ownership of the Trademarks or the validity of the Trademarks; or (iii) failure of any of the Licensee's certification program bearing the Trademarks, or marketed using the Trademarks, to meet The Open Group's Standards of Quality.

### **9.2 Termination by The Open Group**

The Open Group may immediately terminate this Agreement forthwith by notice in writing if at any time:

### **9.3 Failure to Pay Fees**

Except in the case of *bona fide* dispute the Licensee or Affiliate Licensee fails to pay any license fees, royalties, or other payments or provide any statement required in relation to the same within sixty (60) days of their being due; and/or

### **9.4 No Accredited Training Courses**

The Licensee or Affiliate Licensee does not for a period of more than one year develop, market, produce, or provide support services in connection any Accredited Training Course under this Agreement; and/or

### **9.5 Duration Expires**

An event defined in Clause 3 (Duration) of this Agreement as ending the duration of this Agreement occurs; and/or

### **9.6 Prohibited Assignment**

Licensee or Affiliate Licensee makes an assignment for the benefit of its creditors, admits in writing its inability to pay its debts as they become due, commences or is the subject of any proceeding under law relating to any bankruptcy, arrangement, insolvency, or readjustments of its debt, which proceeding is not dismissed within sixty (60) days after commencement; and/or

### **9.7 Legal Liability**

The Open Group determines that the Licensee's or Affiliate Licensee's use of the Trademarks may reasonably lead to legal liability on the part of The Open Group, and The Open Group provides the Licensee or Affiliate Licensee with notice of Termination.

### **9.8 Termination by Licensee or Affiliate Licensee**

The Licensee or Affiliate Licensee may terminate this Agreement at any time upon three (3) months' written notice to The Open Group.

### **9.9 Rights Upon Termination**

Upon termination of this Agreement, the license and rights granted hereunder shall terminate completely and all rights shall revert to The Open Group.

### **9.10 Use of Trademarks' Upon Termination**

Upon the expiration or termination of this Agreement for whatever reason the Licensee or Affiliate Licensee at its expense shall immediately cease to make any use of the Trademarks whatsoever, and shall forthwith cause the Trademarks to be removed from all Accredited Training Courses and from all website, sales literature and other materials and, where necessary to achieve this, shall use its reasonable efforts to recall Accredited Training Courses, sales literature, and materials from retailers and other Persons (other than the ultimate customer). The Open Group may inspect any such Accredited Training Courses, websites, sales literature, and materials to ensure adequate removal of the Trademarks before the training courses are released again. However, stocks of sales literature and other materials bearing the Trademarks existing at the date of expiration or termination of this Agreement, and which were produced in the ordinary course of the Licensee's or Affiliate Licensee's business, may be disposed of by the Licensee or Affiliate Licensee subject to the provisions of this Agreement (including its Appendices and Schedules) within ninety (90) days.

#### **9.11 Survival of Rights and Obligations Upon Termination**

All provisions of this Agreement which in order to give effect to their meaning need to survive its termination shall remain in full force and effect thereafter. Without limiting the generality of the foregoing, the obligations of the parties under Clauses 4, 10, 12 and 13 shall survive any termination of this Agreement.

### **10. Indemnity**

#### **10.1 License or Affiliate Licensee Obligations**

If a third party asserts a claim against The Open Group, the Licensee or Affiliate Licensee (as applicable) 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 Licensee's or Affiliate Licensee's (as applicable) 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 Licensee or Affiliate Licensee, provided that the claim arises out of:

- 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
- The misuse of the Trademarks by the Licensee or the Affiliate Licensee on the Licensee's behalf; and/or
- Licensee's or Affiliate Licensee'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:

- This Indemnity shall not apply in respect of any act done by the Licensee or Affiliate Licensee on the express instructions of The Open Group, and
- The Licensee or Affiliate Licensee (together with any other Licensee or Affiliate Licensee 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.

#### **10.2 Interpretation**

Any provision of Sub-clause 10.1 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.

#### **10.3 Damages**

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

### **11. Assignment**



Neither party shall assign, transfer, subcontract, sub-license, or in any other manner make over to any third party the benefit and/or burden of the whole or any part of this Agreement or purport to do any of the same without the prior written consent of the other not to be unreasonably refused where assignment is part of a merger, reconstruction, or transfer of business and the assignee accepts all the obligations of the Licensee or Affiliate Licensee or The Open Group, as appropriate, under this Agreement.

## **12. Confidentiality**

### **12.1 Confidential Information**

The Open Group shall, except where a provision of the Agreement provides otherwise, maintain in confidence all information disclosed to it under or in relation to this Agreement by the Licensee or Affiliate Licensee, which is in writing marked "confidential" or, if oral or visual, is identified as confidential at the time of disclosure and reduced to writing marked "confidential" and sent to The Open Group within thirty (30) days thereafter, and shall not use any such information except for the purposes of this Agreement. The Open Group'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.

### **12.2 Non-Confidential Information**

The obligations of non-disclosure and non-use set out in Sub-clause 12.1 above 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 a Person's possession without obligation of confidence prior to its disclosure pursuant to this Agreement, or is subsequently independently developed by that Person by employees having no access to the information disclosed hereunder,
- c. Is subsequently rightfully obtained without obligation of confidence by a Person from a source other than the Licensee or Affiliate Licensee as evidenced by written records, is required to be disclosed by order of any court of competent jurisdiction or to enable the Trademarks or any license thereunder to be validly registered or notified in any part of the Territory or otherwise to protect the validity of the Trademarks,

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 sub-clause.

### **12.3 Survival of Confidentiality Obligations Survival**

The obligations of non-disclosure, and the limitations on use, set out in Sub-clause 12.1 above, shall survive termination of this Agreement but subject to Sub-clause 12.2 above.

### **12.4 Limited Disclosure**

The Open Group may disclose the Licensee's or Affiliate Licensee's confidential information to those of its employees who reasonably require access to such information. For the avoidance of doubt, The Open Group may disclose the Licensee's or Affiliate Licensee's confidential information to employees of the Licensee or Affiliate Licensee.

## **13. Export Restrictions**

The Licensee or Affiliate Licensee agrees with respect to its usage of the Trademarks and the Accredited Training Courses to comply with all applicable treaties, laws, and/or regulations, including but not limited to any applicable import or export laws. The Licensee or Affiliate Licensee will be responsible for conducting its activities under this Agreement in compliance with such laws.

## **14. Entire Agreement**

This Agreement including its Appendices, Schedules and documents referred to therein, including, but not by way of limitation, the Accreditation Policy, constitute the entire agreement and understanding of the parties relating to the subject matter of this Agreement and supersede all prior oral or written agreements, understandings, or arrangements between them relating to such subject matter. For the avoidance of doubt, this Agreement supersedes any agreement between The Open Group and the Licensee or Affiliate Licensee in respect of The Open Group Certification for People Program but does not supersede any agreement in respect of other Open Group

certification or compliance programs.

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, subject to Clause 18, no change may be made to this Agreement except in writing signed by duly authorized representatives of both parties.

Nothing in this Agreement affects the application of any other Agreement between The Open Group and the Licensee or Affiliate Licensee (including, without limitation, any membership agreement).

## **15. 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.

## **16. Notices**

Any notice or other document to be given under this Agreement, except in circumstances specifically providing for notices by electronic mail, shall be in writing in the English language and 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. 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.

## **17. Interpretation**

### **17.1 Headings**

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

### **17.2 Singular and Plural Words**

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

## **18. Schedules, Appendices, and Amendments**

### **18.1 Schedules**

The object of each Schedule is to specify, inter alia, the specific Program, training course, ATC Provider, and any other supplemental details relating to this Agreement. Notwithstanding Clause 14 above, a Schedule executed by the Parties and incorporated into this Agreement (with its Appendices) embodies an entire agreement between the Parties relating to the identified Accredited Training Course in the Schedule.

### **18.2 Amendment of Appendices**

Subject to any express limitations set out therein, the Appendices to this Agreement may be amended by The Open Group from time to time, consistent with the processes established by The Open Group, as follows:

- a. Appendix A (The Trademarks) will be amended from time to time to reflect the addition and/or removal of a trademark.
- b. Appendix B (The Territory) will be amended from time to time to reflect the addition and/or deletion of countries. Countries will be added on application for and completion of the registration of the Trademarks in such additional countries. Deletions of countries may be made for legal or reasonable commercial reasons and the Licensee or Affiliate Licensee will be notified of each such deletion accordingly.
- c. Appendix C (Trademark Usage Guide) will be held as stable as possible in order to protect the Licensee's or Affiliate Licensee's investment.
- d. Unless otherwise agreed, amendments shall take effect three (3) months after they are communicated in writing to the Licensee or Affiliate Licensee.

### **18.3 Consequences of Amendment of the Trademark Usage Guide**

If The Open Group amends the Trademark Usage Guide, the Licensee or Affiliate Licensee is not required to alter and may continue to use any Accredited Training Course, container, label, written material, advertising material, promotional material, or other item already produced in the normal course of business for sale or distribution prior to the effective date of Licensee's or Affiliate Licensee's notice of such amendment.

**19. Governing Law and Jurisdiction**

The validity, construction, and performance of this Agreement shall be governed by the laws of the Commonwealth of Massachusetts and shall be subject to the non-exclusive jurisdiction of the Massachusetts courts, except that proceedings to the extent only that they relate to the validity or enforcement of any of the Trademarks in any part of the Territory shall be governed by the law and procedures of that part of the Territory.

**20. Compliance with Local Requirements**

If in any jurisdiction the effect of any provision of this Agreement or the absence from this Agreement of any provision would be to prejudice the Trademarks or any remedy under the Trademarks, the parties will make such amendments to this Agreement and execute such further agreements and documents limited to that part of the Territory which falls under such jurisdiction as may be necessary to remove such prejudicial effects.

**21. No Joint Venture**

Nothing contained in this Agreement shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties. The relationship between the parties shall at all times be that of independent contractors. Neither party shall have authority to contract for or bind the other in any manner whatsoever.

**22. Severability**

If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law, all remaining provisions of this Agreement shall remain in full force and effect.

**23. Execution**

ACCEPTED AND AGREED TO:

FOR AND ON BEHALF OF

FOR AND ON BEHALF OF

\_\_\_\_\_  
Licensee

**THE OPEN GROUP**

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Email: \_\_\_\_\_

Email: legal@opengroup.org

Address: \_\_\_\_\_

548 Market St. #54820

\_\_\_\_\_

San Francisco, CA 94104-5401

\_\_\_\_\_

United States of America

\_\_\_\_\_  
This form may be digitally filled and signed, or it may be downloaded, filled in BLOCK LETTERS, hand-signed, and scanned. Please provide legal company name, complete address, and email in PDF to [legal@opengroup.org](mailto:legal@opengroup.org). The Open Group will countersign and return a fully executed copy to the email address provided above. If preferred, you may just complete, sign and send this signature page.

## Appendix A: The Trademarks

### 1. Accreditation Logo

The Open Group Accreditation Logo and any of its component parts shown in the sample below.



The Open Group Accreditation Logo is a combination of The Open Group Certification Mark with a check symbol forming the word “Open”, “The Open Group”, “Accredited Training Course”, a separator bar, and the Label used to indicate the requirements against which the training course is accredited, specifically identified in the Trademark License Schedule executed by the Parties.

The Trademarks may only be used in connection with the Accredited Training Course specified in the Trademark License Schedule and in accordance with the Trademark Usage Guide (Appendix C).

## Appendix B: The Territory

### Restricted Countries

These countries are excluded from the licenses granted under this Agreement unless the special registration fees set out in Sub-clause 8.1 of this Agreement have been paid.

None.

### 1. Excluded Countries

None.

### 2. Registrations and Applications

Mark	Country	Class	Status	Reg. No
ArchiMate	CTM (Community Trademark)	42	Registered	004767711
ArchiMate	USA	9, 16, 35, 41, 42	Registered	4420725
The Open Group Certification	Australia	9, 16, 42	Registered	933403
The Open Group Certification	Canada	9, 16, 42	Registered	TMA641229
The Open Group Certification	CTM	9, 16, 42	Registered	3289527
The Open Group Certification	Japan	9, 16, 42	Registered	4801548
The Open Group Certification	USA	9, 16, 42	Pending	
TOGAF	Australia	9, 16, 41, 42	Registered	1217700
TOGAF	Brazil	16 41 42	Pending	830981730 830981608 830981713
TOGAF	Canada	00	Registered	TMA770747
TOGAF	China	9 16 41 42	Registered	6987084 6971736 6971735 6987083
TOGAF	CTM	9, 16, 41, 42	Registered	6514384
TOGAF	India	09, 16, 41, 42	Pending	1641472
TOGAF	Japan	9, 16, 41, 42	Registered	5208650
TOGAF	South Africa	9 16 41 42	Registered	2007/29324
TOGAF	USA	9, 16, 41, 42	Registered	3801557

# Appendix C Trademark Usage Guide

## 1. Using Trademarks

### 1.1 Introduction

Trademarks are amongst the most valuable assets of any organization. Trademarks are important because they:

- Identify and distinguish a product or service
- Serve as an assurance of consistency of the quality of a product
- Assist in advertising and promoting a service or product

Unlike rights derived from patents and copyrights, which provide protection for only a limited number of years, Trademark rights can last forever. Trademark rights can also be lost forever. The exclusive right granted in a Trademark is usually lost as a result of careless or improper use, usually by allowing the mark to be used as generic or descriptive words for products. All of the following were once valuable Trademarks in the U.S.A.: aspirin, escalator, cellophane, zipper, shredded wheat, corn flakes, and kerosene. All became common or generic words because their owners did not use them carefully and correctly and did not prevent the improper use of them by others.

This Guide describes the rules for the use of The Accreditation Logo set out in Appendix A. It is designed to be a practical guide to practitioners.

### 1.2 Legal Status

This Guide forms Appendix C of The Open Group Trademark License Agreement. It forms an integral part of the Agreement and should be read in conjunction with it.

The Agreement defines the conditions and technical criteria that must be fulfilled before the Licensee or Affiliate Licensee may make use of the Accreditation Logo. This Guide defines the permitted visual presentation, form, and manner in which the Accreditation Logo can be used by a Licensee or Affiliate Licensee who complies with those conditions and technical criteria. Failure to comply with the mandatory provisions of this Guide constitutes a breach of the Agreement, but the Licensee or Affiliate Licensee shall use its most reasonable efforts to comply with all the provisions herein.

The only circumstance in which the Trademarks may be used is as an Accreditation Logo on or in relation to the Accredited Training Courses to which the Licensee or Affiliate Licensee is registered, as identified in a fully executed Trademark License Schedule.

Of itself, this Guide does not grant permission to use any Trademark.

### 1.3 Use of Trademarks by Third Parties

There are circumstances where, for example, in referring to a Trademark in editorial or articles, the use of a Trademark is either desirable or unavoidable. Such use of Trademarks is permitted, without the requirement for the user to be licensed, provided that the rules in this Guide are followed.

When the Licensee or Affiliate Licensee engages a Broker to promote or market the Accredited Training Course, the Licensee or Affiliate Licensee must ensure that the Broker correctly discloses its broker relationship to the Accredited Training Course by requiring the Broker to include the following attribution directly following the Accredited Training Course name in all its textual materials:

In the case of the Licensee engaging a Broker:

- “<Accredited Training Course name> delivered by <ATC Provider> is a course accredited by The Open Group. <Broker> promotes this course for <ATC Provider>.”

In the case of the Affiliate Licensee engaging a Broker:

- “This < Accredited Training Course name> course is being run by <Affiliate> in association with
- <ATC Provider> and is accredited by The Open Group. <Broker> promotes this course for <Affiliate>.”

Accordingly, the Licensee or Affiliate Licensee must ensure that the Broker acknowledge and attribute the

applicable trademarks of The Open Group.

## 2. Trademark Rules for Proper Usage

### 2.1 Use in Text and Descriptive Material

When referring to an Accredited Training Course in text, in all formats and media, such information, advertising, or promotion of the Accredited Training Course must clearly identify: (a) that the course is accredited; (b) the name of the organization whose course is accredited by The Open Group; and (c) the organization who will be delivering the course.

Licensees and Affiliate Licensees are encouraged to use one of the following examples, as applicable; In the case of the Licensee delivering the course:

- “This <ATC Provider> <Accredited Training Course name> course is accredited by The Open Group.”
- “<Accredited Training Course name> course from <ATC Provider> is accredited by The Open Group”.
- “Our <Accredited Training Course name> course is accredited by The Open Group.” In the case of the Affiliate Licensee:
- “This <Accredited Training Course name> course is being run by <Affiliate> in association with <ATC Provider> and is accredited by The Open Group.”

A Trademark whenever and wherever it appears in all formats and media must be distinguished from the surrounding text. This applies, but is not limited, to advertising and promotional copy, course handouts, brochures, posters, billboards and other collateral materials, manuals, internal memoranda, editorial, articles, correspondence, presentation materials, web pages, email marketing, mobile, social media and other electronic applications and messaging.

The graphical design of the Trademark (the Accreditation Logo) must be strictly adhered to. The Trademark must always be used with white space (see Sub-clause 4.3 below) around it and must never be superimposed on or used in association with other graphics or Trademarks.

You should always mark the first or most significant occurrence of the Trademark as appropriate and must place the required attribution as a footnote. The attribution should use the ® symbol for a registered Trademark and the ™ symbol for an unregistered Trademark. It is acceptable to use an asterisk in place of the Trademark symbol where the medium used (for example, electronic mail) cannot reproduce the ® or ™ symbols. However, this is not intended to authorize use of the asterisk as the norm. You may translate the Trademark attribution to national language(s).

The Trademark attribution is important as it reminds competitors, licensees, customers, and others that The Open Group claims exclusive rights in the marks. The first occurrence of the product name linked with a Trademark should be asterisked and the attribution above used after the Trademark attribution. Blanket or generic attributions are not acceptable, such as: “All Trademarks are the property of their respective owners.”

The correct attributions, as applicable, are:

- “The Open Group Certification Mark is a trademark and The Open Group is a registered trademark of The Open Group.”
- “The Open Group Certification Mark is a trademark, and ArchiMate and The Open Group are registered trademarks of The Open Group.”
- “The Open Group Certification Mark is a trademark, and The Open Group and TOGAF are registered trademarks of The Open Group.”
- “The Open Group Certification Mark is a trademark, and ArchiMate, The Open Group and TOGAF are registered trademarks of The Open Group.”

The following *additional* attribution (see below) is required when reference is made to an Accredited Training Course or a Trademark is used on and in relation to an Accredited Training Course:

- “<Accredited Training Course name> from <ATC Provider> is an Accredited Training Course and complies with the accreditation requirements for The Open Group Certification for People:  
<Program Name> Certification Program”

This Attribution is required so that a reader may always easily identify the accreditation requirements to which

an Accredited Training Course is warranted to comply.

### **3. Graphical Representation of the Trademarks**

#### **3.1 The Accreditation Logo**



#### **3.2 Transition from a Previous Accreditation Logo**

Where a Licensee or Affiliate Licensee is already using a previous version of the Accreditation Logo in respect of any Accredited Training Course, the Licensee or Affiliate Licensee may continue such use in the short term. However, the Licensee or Affiliate Licensee should transition to use of the Accreditation Logo set out in Paragraph 3.1 above (in lieu of the previous Accreditation Logo) as soon as possible.

#### **3.3 Use of the Accreditation Logo in Advertisements**

All use of the Accreditation Logo in all formats and media, including but not limited to advertisements, promotional and marketing collaterals, print, audio visual, web, email and mobile communications must be in relation to Accredited Training Courses. If an advertisement, document, or other communication material refers both to Accredited Training Courses and to non-Accredited training courses, the Accreditation Logo must not be used in such a way as to suggest that all the courses being advertised are Accredited Training Courses.

### **4. Other Conditions for Use of Trademarks**

#### **4.1 Combination of Trademarks in Training Course Names**

The license to use the Accreditation Logo does not constitute a license to use any of its component trademarks, use of which are governed by their own individual licenses. An Open Group trademark relating to an Accredited Training Course may be used in conjunction with a training course name only with the prior written permission of The Open Group.

Comprehensive examples of proposed usage and any graphic representation must be submitted with the request to The Open Group.

#### **4.2 Colors for Trademarks**

The color references refer to the International Pantone Matching System for printing purposes. Whenever colors are used in the Trademarks, they must be accurately matched to the standard. Colors must never be applied to the Trademarks as a screen or a tint.

The standard color(s) for the Trademark is (are):

The colors include Blue PMS 634 and Green 341

Color reproduction is preferred and should be applied where practicable. The specified PMS color must be used in logo reproductions as far as the printing or rendering process allows.

A black-only Accreditation Logo is to be used only when color output options are not available.

#### **4.3 General Conditions**

The Accreditation Logo must always appear in the colors and font specified, and should never be altered in any way except it may be reduced in size. In order to ensure the legibility of Accreditation Logo, the minimum recommended size is 25 mm, or 1 inch in length for print, and 120 pixels for web/html use. The Accreditation



Logo should stand alone and must always be surrounded by a generous amount of space. It must not be enclosed within a contrived shape or used as part of another symbol or name (except as prescribed in Paragraph 4.1 above). The Accreditation Logo must not be juxtaposed to other symbols or text in such a way as to show a connection with them.

For purposes of protecting the Trademarks and their registration, The Open Group would like to receive from the Licensee or Affiliate Licensee a copy of the final published form of materials on which the Trademarks are used.

To change a logo beyond the provided dimensions, or for additional information, contact The Open Group by electronic mail at [trademarks@opengroup.org](mailto:trademarks@opengroup.org).