

# The Open Group Certification for People Program Open FAIR Training Course Accreditation Agreement

**Revision 1.0, October 2013**

This Accreditation Agreement ("Agreement") is made and entered into by and between the following Parties: X/Open Company Limited, trading as The Open Group ("The Open Group"), Apex Plaza, Forbury Road, Reading, Berkshire RG1 1AX, England, RG1 1LX and the entity described in the signature section of this Agreement ("Organization").

**WHEREAS:**

1. The Organization wishes to submit a Candidate Training Course for accreditation in **the Open FAIR Certification for People** program ("the Program"); and,
2. The Candidate Training Course is uniquely defined in the Registration Form (available when logged in at: <http://openfair-cert.opengroup.org>); and,
3. The Open Group is the Certification Authority ("CA") operating the Program in accordance with the terms of the Accreditation Policy and Certification Policy of the Program.

**NOW THEREFORE**, in consideration of the mutual rights and obligations of the Parties set forth below, the Parties agree as follows:

**1. Definitions:**

As used in this Agreement, the terms "Agreement", "The Open Group", "the Program", "CA" will have the meanings indicated above. Additional defined terms are as follows:

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.
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, currently available at <a href="http://openfair-cert.opengroup.org">http://openfair-cert.opengroup.org</a> .
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 Register	The official list of all Accredited Training Courses, which is maintained by the Certification Authority and made 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. This criteria is documented in The Open Group Certification for People Training Course Accreditation Requirements document relating to the Program, currently available at <a href="http://openfair-cert.opengroup.org">http://openfair-cert.opengroup.org</a> .
Accreditation Trademark License Agreement (Accreditation TMLA)	The agreement between the Organization and The Open Group that contains the legal commitment by the Organization to the terms and conditions for use of the Accreditation Logo.
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 Open FAIR Accreditation Register.
Assessment	An inspection of an Organization's training course training materials, processes, policies, and staff to determine the degree to which the Organization's Candidate 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 Organization 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.
Candidate Training Course	An Organization's training course that has not yet been accredited.
Certification Authority	The organization officially sanctioned to manage 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 System Deficiency	An agreed error in the Certification and/or Accreditation systems, which is inhibiting the 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	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 by the Accreditation Requirements. An Interpretation is one possible outcome of a Problem Report.
Person	Includes a body of persons whether or not incorporated.

Problem Report	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.
Registration Form	A web form completed by the Organization to register a Candidate Training Course for Accreditation. The form contains information on the Organization and the Candidate Training Course to be accredited.

## 2. The Certification Authority's Obligations

### 2.1 Accreditation

- 2.1.1 The Certification Authority will perform all of the actions required of the Certification Authority in the Accreditation Policy.
- 2.1.2 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.
- 2.1.3 After a complete and well-formed submission is received, the Certification Authority's designated Assessor will carry out the documentation Assessment within ten (10) business days.
- 2.1.4 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.
- 2.1.5 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.
- 2.1.6 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.
- 2.1.7 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.
- 2.1.8 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.
- 2.1.9 The report of the on-site audit will be communicated 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.

## 2.2 Additional Languages and Delivery Methods

- 2.2.1 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.
- 2.2.2 The Certification Authority will also add the new delivery language or delivery method to the schedule of on-site assessments for that ATC.

## 2.3 Renewal

The Certification Authority will send a renewal reminder notice by electronic mail to the Organization at or before ninety (90) days prior to the annual renewal due date, requesting sight of any revised course material or Quality Management System documentation, as well as the Organization's own quality assessment reports in respect of the Accredited course. The Certification Authority may also schedule an on-site assessment.

## 2.4 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.**

# 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. The Organization must also formally accept the terms of this Agreement by having an authorized person sign below, and must authorize payment of the applicable Accreditation fees when due.
- 3.1.2 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.**
- 3.1.3 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 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.

### **3.5 Renewal**

- 3.5.1 During the period of this Agreement, renewal of Accreditation is required periodically at intervals defined in the Accreditation Policy. Failure to respond to the Certification Authority's notice of renewal with an indication that the Organization would like to renew the accreditation of the ATC or failure to complete the renewal process within thirty (30) days after the due date will result in removal of the ATC from the Accreditation Register.
- 3.5.2 The Organization must pay the renewal fee defined in the then current Accreditation fee schedule published by The Open Group prior to the renewal date.

### **3.6 Examination and Certification Fees**

- 3.6.1 In the case of courses for which the Certification Authority has approved the use of a paper-based examination, the Organization will pay the Certification Authority the applicable fee for each course attendee upon completion of the course.
- 3.6.2 In all other cases, the Organization is required in advance of each occasion on which the ATC is to be delivered to buy appropriate examination vouchers from the Certification Authority for each ATC attendee. The Organization must provide an appropriate examination voucher to each ATC attendee as part of the course fee.

### **3.7 Additional Delivery Languages and Delivery Methods**

- 3.7.1 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.
- 3.7.2 The Organization must submit any translated or modified course materials to the Certification Authority and must pay the applicable fees.
- 3.7.3 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. Confidentiality**

- 4.1 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.
- 4.2 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.

- 4.3 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 4, 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.
- 4.4 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.
- 4.5 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.
- 4.6 **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 will be terminated.**

## 5. Liability and Indemnity

### 5.1 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).

## **5.2 Indemnity**

The Organization shall indemnify and hold harmless the Certification Authority together with its officers, servants, agents, subcontractors, and shareholders of the Certification Authority and their servants when engaged in activities on behalf of the Certification Authority but only to the extent that they are acting in that capacity (together the "Indemnified") against any and all demands, claims, and liability for direct losses, damages, settlements and costs (including lawyers' fees) of any nature whatsoever asserted against or suffered by the Indemnified, but limited to demands and claims from a third Person, and liability incurred from such demands, and claims arising out of the Organization's operation of an ATC or the manufacture, use or supply of products or services, provided that

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

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

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

## **6. General**

### **6.1 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.

### **6.2 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.

### **6.3 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 5<sup>th</sup> day following the mailing or transmission, whichever occurs first.



#### **6.4 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.

#### **6.5 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.
- c. Immediately upon the Certification Authority's discovery of a breach of clause 4.6

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.

#### **6.6 Governing Law**

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

### **7. Payment of Fees**

- 7.1. The Fees are listed on the Certification Authority's web site at <http://openfair-cert.opengroup.org/> 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 renewal date of the ATC to which they apply, and annually thereafter.
- 7.4. Fees are payable U.S. dollars.
- 7.5. Unless the Certification Authority has agreed alternative arrangements for payment, fees must be paid by credit card in advance
- 7.6. Fees are non-refundable.

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## 8. Execution

By signing below, the Organization agrees to be bound by this Accreditation 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**

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Signed

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Signed

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Name

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Title

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Title

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Date

\_\_\_\_\_  
Date

Facsimile Number: \_\_\_\_\_

Facsimile Number: +1 240 250 6102

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

Email: legal@opengroup.org

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

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