

Schedule A of the Agreement

This document offers confirmation of Third Party licensing arrangements for the use and delivery of Accredited ITIL® and ISO/ICE 20000 courseware between:

Name of Accreditation Training Organization (ATO): Pultorak & Associates, Ltd. _____

Full Mailing Address: 6828 34th Avenue NE, Suite 100, Seattle, WA 98115 _____

Authorized Representative Name: David Pultorak _____

AND:

Name of Licensed Affiliate (LA) : _____

Full Mailing Address: _____

Authorized Representative Name: _____

According to signed arrangements documented and agreed to by the aforementioned parties, **NAME OF LA** is licensed to deliver the following Accredited ITIL® and ISO Training as owned by **Pultorak & Associates, Ltd.**

Please select all courses that apply:

<input type="checkbox"/>	ISO/IEC 20000 Foundation	<input type="checkbox"/>	ITIL® Continual Service Improvement (CSI)
<input type="checkbox"/>	ITIL® Foundation	<input type="checkbox"/>	ITIL® Planning Protection and Optimization (PPO)
<input type="checkbox"/>	ITIL® Service Strategy (SS)	<input type="checkbox"/>	ITIL® Service Offerings and Agreements (SOA)
<input type="checkbox"/>	ITIL® Service Design (SD)	<input type="checkbox"/>	ITIL® Release Control and Validation (RCV)
<input type="checkbox"/>	ITIL® Service Transition (ST)	<input type="checkbox"/>	ITIL® Operational Support and Analysis (OSA)
<input type="checkbox"/>	ITIL® Service Operation (SO)	<input type="checkbox"/>	ITIL® Managing Across the Lifecycle (MALC)

Originating Date of this Agreement _____

End date of Third Party Agreement: _____

Will the LA be utilizing ATOs Qualified Trainers (Yes/No): _____

I agree to the terms of full agreement attached to this Schedule A **LA Authorized Initials** _____

ATO Authorized Signature: _____ **Date:** _____

LA Authorized Signature: _____ **Date:** _____

This Agreement (“Agreement”), dated and effective as indicated on the Schedule A of this agreement is between the Accredited Training Organization (ATO) Pultorak & Associates, Ltd. having an address at 6828 34th Avenue, NE Seattle, WA 98115 (“Pultorak”) and the Licensed Affiliate (“LA”), named on the Schedule A of this agreement.

Agreement / Terms between the ATO (Pultorak & Associates) and the LA

The LA is a training provider institute. The LA is applying to become accredited as an EXIN Accredited Training Provider (ATA) associated with Pultorak & Associates as the ATO, and is permitted by this agreement to train on the courses agreed to as outlined in the Schedule A of this agreement.

Pultorak, the ATO, represented by David Pultorak is an EXIN Accredited Training Organization for all Components mentioned in the Schedule A amendment to this agreement and is providing their Courseware, as defined below, to the Applicant.

The Courseware that is provided by the ATO, and will be used by the Applicant from the moment the application to become a LA for the Components is granted, is defined as follows:

- (1) Trainer manual, including detailed course program
- (2) Material for the course participants.

A. Exclusivity

Within the validity of this agreement the Applicant is not allowed to use courseware from any other party, including itself, for the Components as defined in Schedule A of this agreement. The ATO is allowed to have similar agreements with other training providers for courses not agreed in Schedule A of this agreement, in order to support them in the EXIN accreditation process.

B. Responsibilities

It is the ATO’s (Pultorak’s) responsibility to

- Support traceability of each document or file the Courseware consists of, by using adequate naming conventions, including version control.
- Keep the Courseware up to date, in accordance with the EXIN accreditation requirements, the exam requirements and exam literature, the field of the course content, and the field of education.
- Seriously consider any feedback from the Applicant on the Courseware, and the related processes of development and delivery of the Courseware.
- Have the Courseware or any new versions approved by EXIN before use by any party.
- Provide any updates of the Courseware to the Applicant, and support this by providing an adequate summary of changes.

It is the LA’s responsibility to

- Only use the complete, and most recently acquired Courseware as defined above for all components listed above.
- Only use the original Courseware, as provided by the ATO. The LA is not allowed to make any changes in any document or file in the Courseware, unless explicitly approved by both the ATO and EXIN. In case of translation of the Courseware into another language, this should be done by a professional translator, and is under the responsibility of the Applicant. Exception: For adding logos of the Applicant to the Courseware, no approval by EXIN is required. However, these logos may never be published instead or more prominent than the ATO’s logos.
- Provide the ATO with all relevant feedback on the Courseware, and the related processes of development and delivery of the Courseware, in order to support the partnership.
- Honor the license agreement associated with the Courseware trainer and participant kits.

C. Trainer Certification.

- The LA shall not allow any of its employees or any other person to teach a Course unless first qualified as a Certified Trainer under this Agreement. Certified Consultant/Trainers must be recertified by Pultorak when there are revisions or changes to a Course or a Courseware Kit. Trainer Certification in one Course does not apply to any other Course. Any LA employee participating in Consultant/Trainer Certification must first meet The LA's instructor standards. If at any time a The LA's employee or any other person fails to meet The LA's instructor standards, that employee shall not teach or continue to teach a Pultorak Course, notwithstanding the fact that person successfully completed Consultant/Trainer Certification. The LA's employees and any other persons otherwise qualified as Certified Trainers must remain current in the curriculum and content used for each Pultorak Course, including Courseware Kits, and maintain satisfactory student ratings and quality measurements as provided in this Agreement, including evaluations provided by students. Certified Trainers will be required to maintain an acceptable level of Course Delivery quality measured by student feedback surveys with an average score of 80% or above and an average pass rate of 90% or above for students taking certification examinations in conjunction with their classes. Re-certification by Pultorak is required when there are significant changes to Courseware Kits. Recertification of a Certified Trainer is required if that person also fails to meet any other criteria required by this Agreement. Pultorak reserves the right to revoke Trainer Certification from any person who fails to meet the criteria and requirements under this Agreement. If at any time a Certified Trainer does not meet the criteria for teaching a Pultorak Course or delivering a Pultorak Service, The LA will immediately replace the Trainer with one meeting the requirements of this Agreement. Pultorak will provide Trainer Certification which will be purchased by The LA at a price at actual cost to Pultorak.

D. *Post -Class Course Evaluation.*

- The LA will request that each participant in a Pultorak Course complete a post-Class/Course evaluation. The LA prefers the use of an electronic evaluation provided through The LA will provide copies of any post-Class/Course evaluations to Pultorak in a timely manner upon the request of Pultorak. Participant and Instructor feedback relating to Courseware Kits will be consolidated monthly and a summary provided to Pultorak. Feedback will be reviewed by Pultorak for consideration in course updates and improvements.

E. *Resolutive conditions*

- Both the ATO and the LA are aware of the fact that both are obliged to meet the LCS accreditation requirements relevant for the activities under their responsibility. Any nonconformity to these requirements will lead to termination of the agreement.
- Both parties are aware that in case the ATO's accreditation for certain components is, for any reason, withdrawn, the Applicant will no longer be accredited for those components as well.

F. *License and Use of Pultorak Courses and Courseware Kits by the LA*

- Subject to the other terms and provisions of this Agreement, Pultorak will provide all Courseware Kits to be used in Pultorak Courses and for Consultant/Trainer Certification, under a limited, non-exclusive license granted to The LA by Pultorak. The LA's license rights, including use of the Courseware Kits are strictly limited to the provisions set forth in this Agreement. The LA's limited license rights are subject to the following:
 - Pultorak Courseware Kits shall be used only in the context of teaching Pultorak Courses offered by The LA under the terms of this Agreement based on the Course outlines and content developed by Pultorak.
 - Pultorak Courses shall follow the content and outlines established by Pultorak, and shall be taught only by Certified Consultant/Trainers completing Consultant/Trainer Certification as provided in this Agreement.

- All Pultorak Courseware Kit content shall state or otherwise identify that they are being used by The LA under license from Pultorak, and shall also state that all rights and ownership of each Pultorak Courseware Kit are retained by Pultorak.
- The LA shall not have the right to assign or transfer its limited license granted under this Agreement, nor is it authorized to allow any third party to either use, receive, or distribute any Pultorak Courseware Kits, or to offer or teach any Pultorak Course.
- The LA shall not copy, scan, duplicate, or publish, either on its own or through a third party, any Pultorak Courseware Kits, or any other Pultorak intellectual property.
- The LA shall not violated the licensing agreements of Pultorak intellectual property, including, but not limited to, use of instructor kits by more than one instructor (as they are licensed per instructor), and use of participant materials by more than one participant or for instruction (as they are licensed per participant).
- The LA employees or other persons teaching Pultorak Courses and using Pultorak Courseware Kits must complete Consultant/Trainer Certification, and meet the requirements of Section 1.1.5.

G. Term.

- This Agreement shall be in effect for an initial one year term with start and end date specified in the Schedule A of this agreement, subject to the termination provisions of this agreement. Following the initial term, the parties may renew this Agreement for additional one (1) year periods upon mutual written agreement, with renewal remaining subject to this agreement. The date on which this Agreement terminates shall be “the Termination Date.”

H. Termination.

- Either party may terminate this Agreement (i) if the other party breaches a material provision of this Agreement and such breach is not cured within thirty (30) days after receipt of written notice of the breach from the non-breaching party unless the breach is deemed not curable; (ii) immediately upon the insolvency of either party, the making of any assignment for the benefit or creditors by either party; the voluntary or involuntary appointment of a receiver for either party; the voluntary or involuntary bankruptcy filing of either party; or for the composition, extension, arrangement or readjustment of its obligations; or (iii) in the event of a sale of a majority ownership interest in a party, or sale or transfer of a majority of a party’s business or assets.
- Either party may elect to terminate this Agreement after the second year, provided, however, that in order to exercise the right to termination under this agreement, the party electing to terminate must provide advance written notice of its election to the other party no later than six (6) months before the effective Termination Date. This section does not apply to any renewal term(s) after expiration of the original three year term under this agreement.
 - Example: The electing party chooses to terminate this Agreement on December 1, 2013. It must give written notice of election to the other party, which must be received by the other party no later than June 1, 2013 (six months before the elected Termination Date).
- Upon termination, The LA shall immediately cease the offering or teaching of any Pultorak Course and Class, including any being taught by or through The LA personnel and shall cease using or distributing any Pultorak Courseware Kits or using any other Pultorak intellectual property. All Pultorak Courseware Kits or other Pultorak intellectual property in The LA’s possession will be returned to Pultorak. Both parties will cease any promotion or marketing contemplated by this Agreement, and will remove any reference or description of the other party from its respective marketing materials or websites.
- Termination of the LA License Rights. In addition to the termination events described in Section 3.2, The LA’s license rights under this Agreement shall terminate immediately, and are not subject to cure under this agreement, in the event of any of the following:
 - The LA’s violation of any license or royalty provision of this Agreement, including without limitation, all sections of this agreement;

- The LA's violation of licensing agreements for all Pultorak learning products, including but not limited to instructor and participant kits, CBTs, and eLearning;
 - The LA's violation of Exclusivity as outlined in this agreement;
 - The LA's failure to make any payments due to Pultorak, including royalties;
 - Termination of this Agreement, including expiration of the contract term set forth in this agreement.
- Upon termination of The LA's license rights, The LA shall cease offering or teaching any Pultorak Courses, and it shall immediately return all Pultorak Courseware Kits or other Pultorak intellectual property, either in its possession or custody or under its control, to Pultorak at The LA's sole expense. Under The LA's "custody" or "control" includes any materials in the possession of or used by any The LA personnel.
 - Upon any termination, The LA and Pultorak shall be entitled to be paid for all products ordered and services performed up to the effective date of termination.

I. *Entire Agreement; Amendment.*

- This Agreement (including any attachments hereto) sets forth the entire understanding of the parties with respect to the subject matter hereof. No change, modification or amendment of this Agreement, or any provision hereof, shall be valid unless the same shall be in writing and signed by both parties hereto.

J. *Non-Solicitation.*

- During the term of this Agreement and for a period of one (1) year following the Termination Date, Pultorak agrees not to hire, solicit, or attempt to solicit directly or indirectly the services of any employee or subcontractor of The LA without the prior written consent of The LA . In addition, Pultorak will not induce or attempt to influence any employee or subcontractor of The LA to terminate his or her contractual agreement with The LA
- During the term of this Agreement and for a period of one (1) year following the Termination Date, The LA agrees not to hire, solicit, or attempt to solicit directly or indirectly the services of any employee or subcontractor of Pultorak without the prior written consent of Pultorak. In addition, The LA will not induce or attempt to influence any employee or subcontractor of Pultorak to terminate his or her contractual agreement with Pultorak.

K. *Exclusivity.*

- Except for Pultorak Classes, The LA agrees that it shall not itself offer, nor shall it enter into an agreement with any other third party company to permit such company to deliver any ITIL-based or MOF-based classes for courseware and courses specified in the agreement, whether public or private, for The LA customers or offered by The LA to the general public during the term of this Agreement, and for a period of one year following the Termination Date in the event of termination under this agreement.

L. *Audit Rights.*

- Pultorak has the right to audit the books and records of The LA to confirm that all payments due to Pultorak from The LA have been properly calculated and paid. These rights will exist during the term of this Agreement and for a period of one (1) year following the expiration or termination of this Agreement. Pultorak will bear the initial cost of any audit, but if it is determined that The LA has underpaid any sums due Pultorak, Pultorak shall be immediately paid the amount of underpayment, and will be reimbursed by The LA for the cost of the audit.

M. *Independent Contractor/Relationship of Parties.*

- The relationship of Pultorak to The LA shall be that of an authorized purchaser of licensed courseware. This Agreement does not constitute either party as the agent, fiduciary, or legal representative of the other for any purpose whatsoever. This Agreement shall not create a partnership, joint venture, joint enterprise, agency, fiduciary, or similar relationship between the parties. The parties' relationship under this Agreement is that of a seller of and purchaser of licensed courseware only; and neither party shall represent to any person or third party that it has any relationship with the other party other than that of independent contractor. Neither party shall have authority to bind the other party unless expressly so authorized in this Agreement. Each party shall at all times be solely responsible for its own employees, including payments owed to or on behalf of employees, and in compliance with any local, state, or federal laws governing wages and hours, employee compensation, taxes, withholdings, benefits, discrimination, work conditions, or employment eligibility. The LA shall not represent nor hold out Certified Trainers as Pultorak employees or as otherwise being affiliated with Pultorak.

N. *Non-Disclosure Agreement.*

- The following definitions apply: "Disclosing Party" means the party owning Confidential Information and "Receiving Party" means the party receiving Disclosing Party's Confidential Information.
- For purposes of this Agreement, "Confidential Information" means any non-public information or material belonging to or owned by the Disclosing Party, whether written, oral, electronic, or in any other form, received or obtained by Receiving Party at any time, whether before, on or after the date of this Agreement. Confidential Information includes, but is not limited to, know-how, trademarks, copyrights, pricing, technical documents and manuals, training systems, customer contacts, presentations, marketing, publications and papers, or any other intellectual property proprietary or confidential matters of Disclosing Party, pertaining to its products, technology, services, or customer contacts.
- Receiving Party agrees that it will not, directly or indirectly, disclose, copy, duplicate, disseminate, or make available for use the Disclosing Party's Confidential Information to anyone other than in strict performance of its obligations during the term of this Agreement, or at any time after the termination of this Agreement. Receiving Party recognizes and acknowledges that any Confidential Information, as it may exist from time to time, is a valuable, special, proprietary and unique asset of Disclosing Party's business, and it remains the exclusive property of Disclosing Partner. This non-disclosure obligation shall apply to Disclosing Party for the longest period of time authorized by law, up to and including the end of the world. Receiving Party shall, at the request of Disclosing Party, promptly surrender to Disclosing Party upon termination of this Agreement, or at any time before then, any record, file, chart, electronic file, back-up, video, tapes, notes, document, letter, or other tangible item in its possession or under its control relating to Confidential Information. Receiving Party shall not duplicate any electronic or computer data of any kind whatsoever containing, referencing, or disclosing any Confidential Information. The terms of this non-disclosure obligation shall be binding upon any employees or independent contractors of Disclosing Party.

O. *Intellectual Property Rights and Copyrights of Pultorak.*

- The LA acknowledges Pultorak's exclusive copyright to Pultorak Courseware Kits, Pultorak Courses, Pultorak Confidential Information, and other intellectual property of Pultorak. The LA agrees Pultorak shall be the copyright holder in any copyright works of any kind or description that are conceived, created, or developed by The LA during this Agreement that are based on, conceived from, or derived from Pultorak Courses, Pultorak Courseware Kits, Pultorak Confidential Information, or Pultorak intellectual property. The LA agrees to assign and transfer to Pultorak all right, title, and interest in such works. The LA agrees, if requested, to execute any written acknowledgements or assignments of copyright ownership of any works covered by this Agreement as may be necessary for Pultorak to preserve its world-wide proprietorship of the copyright. The LA agrees and acknowledges that any works conceived, developed, or created as described herein shall be deemed "work made for hire," under the Copyright Act of 1976, 17 U.S.C. §101, et. seq. The LA acknowledges and understands that Pultorak shall retain all rights and ownership in said works, including rights of copyright. Pultorak retains all ownership rights to, and any modifications, revisions, or derivatives of or new creations/intellectual property based or derived from, Pultorak Courseware Kits, Pultorak Courses, Pultorak Confidential Information, or Pultorak intellectual property.

P. Indemnification.

- Pultorak agrees to defend, indemnify and hold The LA harmless from any and all damages, including reasonable attorney fees, resulting from any claim arising or alleged to have arisen out of: (a) any breach by Pultorak of a material provision of this Agreement; (b) the negligent or wrongful acts of Pultorak and Pultorak's representatives; and (c) any claim against The LA by any individual employed by Pultorak or performing for Pultorak under this Agreement, brought under applicable workers' compensation, employment discrimination, or contract law.
- The LA agrees to defend, indemnify and hold Pultorak harmless from any and all damages, including reasonable attorney fees, resulting from any claim arising or alleged to have arisen out of: (a) any breach by The LA of a material provision of this Agreement; (b) the negligent or wrongful acts of The LA its employees, agents, officers, directors or representatives; (c) any claim against Pultorak by any individual employed by The LA or performing for The LA under this Agreement, brought under applicable workers' compensation, employment discrimination, or contract law.

Q. Insurance.

- Pultorak, at its expense, shall carry and maintain in force at all times relevant hereto insurance of the type and with minimum coverage limits as follows:
 - Workers Compensation/Employer Liability as required by statute.
 - Commercial general liability (Occurrence Form), including contractual liability, in a combined limit for bodily injury and property damage in the amount of \$1,000,000 per occurrence.
 - All other insurance required by law.
- The LA, at its expense, shall carry and maintain in force at all times relevant hereto insurance of the type and with minimum coverage limits as follows:
 - Workers Compensation/Employer Liability as required by statute.
 - Commercial general liability (Occurrence Form), including contractual liability, in a combined limit for bodily injury and property damage in the amount of \$1,000,000 per occurrence.
 - Automobile Liability for all owned, hired, and non-owned automobiles with \$1,000,000 combined single limit.
 - All other insurance required by law.

R. Non-Discrimination.

- In discharging its obligations under this Agreement, Pultorak and (The LA) agrees not to violate any federal, state or local law prohibiting discrimination against any individual on the basis of race, religion within statutory limits, gender, age within statutory limits, disability within statutory limits, national origin, or veteran status.

S. Miscellaneous.

- **Survival.** The parties' respective obligations of Pultorak and The LA set forth herein shall survive the termination of this Agreement, including without limitation, indemnification, non-disclosure, representations and warranties, and intellectual property and copyright rights.
- **Primary Point of Contact.** Pultorak will provide a primary point of contact for The LA in regard to all matters which arise related to the Pultorak Classes, and v.v. Each party will be required to notify the other of any change in the primary point of contact.
- **Referrals.** If a party identifies and specifically refers a New Client to the other party (the party making the referral defined as the "Referring Party"), the Referring Party will be paid a referral fee by the other party. A "New Client" is defined as a third party with whom the other party had not previously conducted any business before the referral by the Referring Party.
- For the Referring Party to be entitled to a referral fee, the New Client must actually retain the other party for "New Client Business," i.e. an engagement, service, or project. The Referring Party must actively lead and participate in making a sale of New Client Business to the other party. If New Client Business involves a Private Course, the sums due to the Referring Party shall be calculated in accordance with this agreement.
- The referral fee is limited to the first sale of New Client Business to the New Client, i.e., the first service, engagement or project to be delivered by the other party to the New Client. Any subsequent service, engagement, or project between New Client and the other party is not subject to the referral fee.
- The referral fee shall be calculated, and is limited, as follows: the lesser of \$10,000 or ten percent (10%) of the gross revenue payable by the New Client for the New Client Business for the first 12 months the other party provides New Client Business. The referral fee shall be remitted to the Referring Party within 30 days after actual receipt of payment by the other party from the New Client.
- The calculation of the referral fee is limited to the sum payable by the New Client for the first twelve (12) months of the New Client Business. The Referring Party is not entitled to a referral fee on any sums payable by the New Client after the initial 12 month period. The referral fee for New Client Business exceeding a 12 month period will be calculated on a pro rata basis. In no event will the referral fee exceed \$10,000 for each New Client, and no referral fee shall be due on any subsequent projects, engagements, or services between the other party and the New Client.

Example 1: New Client engages the other party on a first project that is scheduled to last for eighteen (18) months. The total fee payable by the New Client for the 18 month project is \$18,000. The Referring Party is entitled to a referral fee based on the amount the New Client would pay pro rata for the first twelve (12) months of the project. The amount owed for the referral fee will be calculated on a pro rata basis for a 12 month period, e.g. where the New Client owes \$18,000 for the 18 month project, the referral fee is calculated on \$12,000. In this example, the referral fee totals \$1,200 ($\$12,000 \times 10\%$).

Example 2: The same as Example 1, except the fee payable for the New Client Business over an 18 month period is \$180,000. The referral fee payable is \$10,000 (the lesser of \$10,000 and $\$120,000 \times 10\%$).

- **Assignment.** Neither party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other party.

- **Publicity.** Except as otherwise provided, Pultorak and The LA shall not in the course of performance of this Agreement or thereafter use or permit the use of each other's name in any advertising, marketing, promotional materials, press releases or customer lists without the prior written consent of the other party. Pultorak logo may be used to advertise the courseware used for the ITIL program and to advertise joint marketing events. Marketing copy will be reviewed and approved by both parties prior to publication. The LA logo may be used to advertise the Pultorak/The LA partnership and consulting/training options for the ITIL program on the Pultorak web site. Marketing copy will be reviewed and approved by both parties prior to publication.
- **Governing Law.** This Agreement shall be governed by the laws of the State of Delaware, without regard to its conflict of laws provisions.
- **Notices.** Any notice required or provided hereunder shall be in writing and shall be deemed to have been properly given if delivered personally, by overnight courier service with package tracing capabilities, or by United States first class mail, certified or registered, postage prepaid, return receipt requested, and addressed as provided above (or such other address as either party may specify in writing to the other). Notices delivered personally shall be effective upon delivery and notices delivered by either overnight courier service or certified or registered mail shall be effective upon their receipt by the party to whom they are addressed.
- **Waiver.** Neither party's failure to exercise any of its rights or remedies under this Agreement will constitute or be deemed a waiver or forfeiture of those rights.
- **Severability.** If any provision of this Agreement is held invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby. The unenforceable provision(s) will be deemed severed from this Agreement, and the remaining provisions will remain binding upon the parties.
- **Headings.** The headings used herein are for reference and convenience only and shall not control any term or provision of this Agreement or the interpretation or construction thereof.
- **Binding Effect.** This Agreement shall be binding upon the parties hereto and their respective successors and permitted assigns.