

BPM+ Health

PARTICIPATION AGREEMENT AND TERMS

1.0 INTRODUCTION

- 1.1. **BPM+ Health.** Business Process Management Plus Health (“BPM+ Health”) is a program of Object Management Group, Inc., a 501(c)(6) tax-exempt organization (“OMG”), and operates pursuant to its own bylaws (the “BPM+ Health Bylaws”).
- 1.2. **Contract.** By submitting below, you (“Participant”) agree that this Participant Agreement (“Agreement”) represents a binding contract between Participant and OMG and commits Participant’s organization to comply with such rules and policies as OMG’s BPM+ Health program may from time to time adopt whenever it engages in BPM+ Health activities (subject to Sections 2.3 and 3.7 below).
- 1.3. **Compliance.** Participant will not enjoy any rights or benefits of membership, but will be subject to the policies and procedures of BPM+ Health whenever it participates in BPM+ Health activities (see Sections 2.2 and 2.3 below). Participants are expected to comply with all applicable laws and regulations, including U.S. laws regarding antitrust.
- 1.4. **OMG Control.** As a program of OMG, the BPM+ Health shall operate in a manner consistent with OMG's purposes and tax-exempt status, subject to the terms of the BPM+ Health Bylaws. The activities of the BPM+ Health, and Participant’s participation in BPM+ Health, do not constitute the activities of a separate association or establish a partnership among BPM+ Health members or participants.

2.0 PARTICIPATION RIGHTS AND OBLIGATIONS

- 2.1 **Generally.** Participant shall not be obligated to pay the annual dues established for membership, but may be required to pay fees established from time to time by OMG or the BPM+ Health Steering Committee (the “Steering Committee”) in order to participate in particular BPM+ Health activities.
- 2.2 **Relation to OMG.** For clarification, participating in BPM+ Health does not make Participant a member of BPM+ Health or OMG and, except as may be expressly provided in the policies and procedures of OMG or BPM+ Health, does not give Participant any rights or privileges of a member or grant Participant any ownership rights in or (except as set forth herein) any other rights with regard to OMG or BPM+ Health.
- 2.3 **Compliance with Policies.** Participant agrees that, whenever it participates in a BPM+ Health activity, it shall abide by the BPM+ Health Bylaws, the OMG Privacy Policy, and any and all additional policies and procedures adopted for BPM+ Health that apply to such activity, as these may be amended from time to time, all of which are hereby incorporated by reference (collectively, the “BPM+ Health P&Ps”).

2.4 Suspension and Termination. OMG or the Steering Committee may suspend or terminate the participation of Participant at any time, in its discretion.

3.0 GENERAL

3.1 Authority to Form Agreement. The person entering into this Agreement on behalf of Participant hereby represents, warrants and covenants to BPM+ Health that (a) it has the authority to enter into this Agreement and to perform its obligations hereunder; (b) entering and performing this Agreement does not and will not violate any agreement to which Participant is a party or by which it is otherwise bound; and (c) when executed and delivered or otherwise accepted by the Participant, this Agreement will constitute a legal, valid and binding obligation of Participant, enforceable in accordance with its terms.

3.2 No Other Licenses. By entering this Agreement, Participant neither grants nor receives, by implication, estoppel, or otherwise, any rights under any copyright, patents or other intellectual property rights of OMG, BPM+ Health or another member or participant, except as may be expressly provided in the BPM+ Health P&Ps.

3.3 No Warranty. EACH PARTY ACKNOWLEDGES THAT, EXCEPT AS OTHERWISE AGREED IN WRITING, ALL SERVICES AND INFORMATION PROVIDED TO OR BY OMG (OR THE BPM+ HEALTH PROGRAM) IS PROVIDED “AS IS” WITH NO WARRANTIES OR CONDITIONS WHATSOEVER, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND OMG AND PARTICIPANT EACH EXPRESSLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY, NONINFRINGEMENT, OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO SUCH SERVICES AND INFORMATION.

3.4 Limitation of Liability. IN NO EVENT WILL EITHER OMG OR PARTICIPANT BE LIABLE TO THE OTHER OR TO ANY THIRD PARTY, UNDER THIS AGREEMENT OR IN CONNECTION WITH SUCH PARTICIPANT’S PARTICIPATION IN BPM+ HEALTH, FOR THE COST OF PROCURING SUBSTITUTE GOODS OR SERVICES, LOST PROFITS, LOST REVENUE, LOST SALES, LOSS OF USE, LOSS OF DATA OR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, OR SPECIAL DAMAGES, WHETHER OR NOT SUCH PARTY HAD ADVANCE NOTICE OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES. EXCEPT FOR CASES OF WILLFUL MISCONDUCT OR GROSS NEGLIGENCE, OR WHERE REQUIRED BY APPLICABLE LAW, OR AS OTHERWISE AGREED IN WRITING, THE AGGREGATE LIABILITY OF OMG (INCLUDING ITS BPM+ HEALTH PROGRAM) TO PARTICIPANT SHALL NOT EXCEED THE GREATER OF \$100 OR THE TOTAL FEES PAID BY PARTICIPANT TO OMG FOR ITS PARTICIPATION IN BPM+ HEALTH DURING THE PAST TWELVE MONTHS.

3.5 Governing Law. This Agreement shall be construed and controlled by the laws of the Commonwealth of Massachusetts without reference to conflict of laws principles. If any

claim or dispute between the parties is not resolved by good faith negotiations, any suits or proceedings pursued by either party shall be brought in the Federal or state courts located in Massachusetts, to whose jurisdiction each party hereby submits.

3.6 Complete Agreement; No Waiver. This Agreement, including all attachments, sets forth the entire understanding of OMG and Participant and supersedes all prior agreements and understandings relating hereto, unless otherwise stated in this Agreement. The waiver of any breach or default will not constitute a waiver of any other right hereunder or any subsequent breach or default.

3.7 Amendment. All amendments to this Agreement or to any BPM+ Health P&Ps enacted by BPM+ Health shall be effective upon their stated effective date.

3.8 No Rule of Strict Construction. Regardless of which party may have drafted this Agreement, no rule of strict construction shall be applied against either party. If any provision of this Agreement is determined by a court to be unenforceable, the parties shall deem the provision to be modified to the extent necessary to allow it to be enforced to the extent permitted by law, or if it cannot be modified, the provision will be severed and deleted from this Agreement, and the remainder of this Agreement will continue in effect.

3.9 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but collectively shall constitute one and the same instrument.

3.10 Compliance with Laws. Anything contained in this Agreement to the contrary notwithstanding, the obligations of BPM+ Health and Participant shall be subject to all applicable laws, present and future, of any government having jurisdiction over them including, without limitation, all U.S. export and re-export laws and regulations. It is the intention of BPM+ Health and Participant that this Agreement and all referenced documents shall comply with all applicable laws and regulations.

3.11 Headings. BPM+ Health and Participant acknowledge that the headings to the sections hereof are for reference purposes only and shall not be used in the interpretation of this Agreement.

3.12 Assignment. BPM+ Health Participation is non-transferable, non-salable and non-assignable.

3.13 Force Majeure. Neither BPM+ Health nor Participant shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, governmental action, labor conditions, earthquakes, health emergencies or any other cause which is beyond the reasonable control of such party.