

OMG Candidate Agreement

Object Management Group, Inc. ("OMG") and you hereby agree that the following terms and conditions (the "Agreement") shall govern your participation in the OMG Certification Program (the "OCP").

1. DEFINITIONS

Throughout this Agreement, the following terms will have the meanings set forth below:

- 1.1 "Program" shall mean one of the formally documented certification tracks offered by OMG under this Agreement.
- 1.2 "Test Materials" shall mean the applicable OMG certification tests for a particular Program and any accompanying materials.
- 1.3 "OMG Certification" shall mean the successful completion of the applicable OMG certification tests and any other requirements for a particular Program as determined by OMG from time to time, and acceptance of the terms of this Agreement.
- 1.4 "Certification Materials" shall mean the materials granted to you by OMG upon OMG Certification.
- 1.5 "Title" shall mean one of the certification titles granted to you by OMG upon OMG Certification.
- 1.6 "OCP Logos" shall mean the OMG Certification Program Logo design mark appropriate to your level of certification depicted in the OCP Logo Usage Requirements provided to you under separate cover upon OMG Certification.
- 1.7 "Licensed Services" shall mean technical support services provided by you in relation to the OMG technologies for which you have a current, valid OMG Certification.
- 1.8 "Personal Information" shall mean your test results and the demographic information you hereby agree to provide for purposes of participating in the OMG Certification Program.

2. CERTIFICATION RIGHTS.

2.1 Certification Grant. Upon OMG Certification, you shall be granted a personal, nonexclusive, nontransferable right to use the applicable Title. You may only use such Title to promote your experience and qualifications related to the use of the applicable OMG technology and for no other purpose. Your grant of such right does not extend to any third parties.

2.2 Certification Term. The Term during which you may use your applicable Title shall commence on acceptance of the Certification Materials, and shall continue until terminated, provided that the OMG Certification requirements have not changed. You

acknowledge that OMG has the right to change the requirements associated with obtaining or maintaining OMG Certifications at any time. At your request, OMG shall provide you with the then current certification requirements. OMG will publicly announce the establishment of additional requirements for certifications.

2.3 No Rights to Certification. Upon termination of this Agreement, you may no longer use your Title. Except as specifically provided herein, you shall have no further rights or obligations under this Agreement after termination.

3. LOGO RIGHTS.

3.1 License Granted. Subject to the terms and conditions set forth in this Agreement, upon OMG Certification, you shall be granted a non-exclusive, non-transferable, personal right to use the OCP Logo on your resume, business cards, marketing collateral, letterhead and website solely in connection with your provision of the Licensed Services. You are granted no other right, title, or license to the OCP Logo or any other OMG trademarks or logos.

3.2 Limitations on Use of Mark. You agree not to use the OCP Logo in any manner that OMG, in its sole judgment, deems to: (a) be in poor taste; (b) diminish or otherwise damage OMG's reputation or its goodwill in the OCP Logo; (c) misrepresent your relationship with OMG; (d) be unlawful; or (e) have the purpose, object or intent to encourage unlawful activity by others.

3.3 Compliance with Guidelines. You agree that your use of the OCP Logo shall be in strict compliance with the OCP Logo Usage Guidelines, and you shall use only OMG-supplied OCP Logo artwork.

3.4 Reservation of Rights. You acknowledge the value of the goodwill associated with the OCP Logo and other OMG trademarks, and acknowledge that such goodwill exclusively inures to the benefit of and belongs to OMG. OMG retains all rights not expressly conveyed to you by this Agreement, and shall have the right to grant licenses to others to use the OCP Logo on or in connection with any goods or services.

3.5 Protection of Mark. You agree to assist OMG, to the reasonable extent necessary, to protect or to obtain protection for any of OMG's rights to the OCP Logo.

3.6 No Challenge of Rights. You agree not to interfere with or bring any kind of action or legal or administrative proceeding in relation to the rights and title of OMG in or to the OCP Logo.

3.7 No Unauthorized Use, Registration. You agree not to use the OCP Logo except as specifically authorized under this Agreement, not to file any application to register, in any class and in any country, any trademark or service mark for the OCP Logo or any other mark confusingly similar to the OCP Logo, and not to use OMG trademarks or potentially confusing variations of OMG trademarks as part of your company name, product names or service names.

4. CONFIDENTIALITY

The content of the Test Materials you are about to receive is owned and copyrighted by OMG Corporation. You understand, acknowledge and agree:

- i. That OMG spends substantial sums in developing and administering its Test Materials and carefully guards their integrity and confidentiality;
- ii. That no portion of the Test Materials may be reproduced without the express written permission of OMG; and
- iii. That the Test Materials are confidential information of OMG and are not to be disclosed, published, disseminated, or distributed.
- iv. That the Test Materials are exclusive and proprietary property of OMG and are protected by OMG's intellectual property rights.
- v. That your obligation of confidentiality under this Section shall survive the termination or expiration of this Agreement.

5. PRIVACY

OMG, its test delivery vendor, some of its supporting vendors and other companies with which OMG has a business relationship concerning testing and certification are international companies, operational worldwide.

You agree to the transmission and use of your Personal Information as set forth herein:

- i. The test delivery vendor gathers your Personal Information. From your registration and testing site, your Personal Information is transmitted electronically by this test delivery vendor to its central certification database, which may be located in another country. The test delivery vendor will then also transmit your Personal Information electronically to OMG, other companies with which OMG has a business relationship with concerning testing and certification and, possibly, to its supporting vendors.
- ii. Worldwide personnel, from OMG, the test delivery vendor, its supporting vendors and other companies with which OMG has a business relationship with concerning testing and certification, have controlled access to your Personal Information.
- iii. Your Personal Information will be used to process your certification. Your Personal Information may also be used by OMG and other companies with which OMG has a business relationship concerning testing and certification for subsequent marketing communications.

6. QUALITY CONTROL.

You agree that the Licensed Services shall be of the highest quality and integrity, and shall meet OMG's quality standards. OMG, in its sole judgment, shall have the right to determine whether

the Licensed Services meet OMG's quality standards. You agree that, when requested by OMG, you will supply to OMG, at your expense, a copy of any of your materials bearing the OCP Logo.

7. TERM AND TERMINATION.

7.1 Termination. This Agreement may be terminated: (a) by either party, in its sole discretion, with or without cause, effective thirty (30) days after written notice of termination to the other party; or (b) by OMG immediately and automatically without notice of any kind (i) if you breach this Agreement in any way; (ii) if you discontinue providing the Licensed Services; or (iii) if you fail to maintain your OMG Certification pursuant to Section 2.2 above.

7.2 Effect of Termination. Upon termination of this Agreement, you may no longer use your Title and shall immediately discontinue all use of the OCP Logo, and the license and rights granted hereunder shall terminate completely. Except as specifically provided herein, you shall have no further rights or obligations under this Agreement after termination.

7.3 Survival. Rights and obligations under Sections 3.4, 3.5, 3.6, 3.7, 4, 5, 6, 7.3, 8, 9 and 10 of this Agreement shall survive termination or expiration of this Agreement for any reason.

8. DISCLAIMER, LIMITATION OF LIABILITY.

OMG MAKES, AND YOU RECEIVE, NO WARRANTIES OR CONDITIONS OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, RELATED TO OR ARISING IN ANY WAY OUT OF THIS AGREEMENT. OMG SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY FOR MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT OF ANY THIRD PARTY RIGHTS. IN NO EVENT SHALL OMG BE LIABLE FOR INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, REVENUE, DATA OR USE) ARISING OUT OF THIS AGREEMENT OR INCURRED BY ANY PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF OMG HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. OMG'S LIABILITY FOR DAMAGES HEREUNDER SHALL IN NO EVENT EXCEED THE AMOUNT OF FEES ACTUALLY PAID TO OMG UNDER THIS AGREEMENT.

9. INDEMNIFICATION.

You agree to indemnify and hold OMG harmless against any loss, liability, damage, cost or expense (including attorneys' fees) arising out of any claims or suits, whatever their nature and however arising, which may be brought or made against OMG arising out of or in any manner connected with: (i) your use of the Title licensed herein; (ii) any personal injury, property damage or other claims which are caused, directly or indirectly, in whole or in part, by your

negligent or illegal acts or omissions; (iii) your use of the OCP Logo; (iv) your promotion, sale, performance, or distribution of Licensed Services; and/or (v) your use or misuse of OMG's confidential information as described in Section 4 above. This Section shall survive termination or expiration of this Agreement for any reason.

10. OTHER PROVISIONS.

10.1 No Joint Venture or Partnership. This Agreement shall not create a joint venture, partnership, principal-agent, employer employee, or similar relationship between the parties. You will not represent yourself as an agent, employee, consultant, contractor or legal representative of OMG or any subsidiary thereof, based upon this Agreement.

10.2 No Warranties by You. In no event shall you have any right to make any representation, warranty, or promise on behalf of OMG.

10.3 Injunction. You recognize and acknowledge that a material breach by you of any of your covenants, agreements or undertakings hereunder will cause OMG irreparable damage, which cannot be readily remedied in monetary damages in an action at law. Therefore, in addition to its rights and remedies otherwise available at law, upon an adequate showing of material breach, and without further proof of irreparable harm other than this acknowledgment, OMG shall be entitled to immediate equitable relief, including, but not limited to, both interim and permanent injunctions, to stop such damage.

10.4 Governing Law and Jurisdiction. This Agreement shall be governed and construed and enforced in accordance with the substantive and procedural laws of the Commonwealth of Massachusetts, without giving effect to the conflict of law rules thereof, and shall be deemed to be executed in Needham, Massachusetts. Any legal action or proceeding relating to this Agreement shall be instituted in a state or federal court in Middlesex County, Massachusetts. The parties agree to submit to the jurisdiction of, and agree that venue is proper in, these courts in any such legal action or proceeding.

10.5 Waiver and Severability. The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach. In the event any provision of this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, then the other provisions of this Agreement shall continue in full force and effect. Except for actions for nonpayment or breach of OMG's proprietary rights, no action, regardless of form, arising out of this Agreement may be brought by either party more than two years after the cause of action has accrued.

10.6 No Assignment. This Agreement may not be assigned by you in whole or in part. Any attempted assignment shall be null and void.

10.7 Entire Agreement. This Agreement constitutes the complete agreement between the parties and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of this Agreement. This Agreement may not be modified or amended except in writing signed by a duly authorized representative of

each party; no other act, document, usage or custom shall be deemed to amend or modify this Agreement.