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Performance-Based Measurement  
for Organizational Effectiveness

## **SUBSCRIPTION AGREEMENT**

The terms and conditions of this Subscription Agreement ("Agreement") are part of a legal agreement between You ("Company or You/Your" includes a person and/or an individual entity) and cPMT, Inc., concerning the cPMT software product provided to You as a service by cPMT (hereinafter referred to as "Software Products" or "Software"). The Software Products include computer software and all component parts, and may include associated media, printed materials, updates, and any "online" or electronic documentation.

THIS SUBSCRIPTION AGREEMENT, including the Privacy Policy and any other agreements referenced herein, contains the complete and entire terms and conditions that apply to Your use of cPMT's services.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### **A. LICENSE GRANT**

Subject to the payment of all applicable Fees, and subject to the terms and conditions of this Agreement, cPMT hereby grants to You a limited, non-exclusive, non-transferable right to use the Software in accordance with the instructions, and in connection with the application services, provided to You by cPMT, solely for Your individual use.

### **B. SUBSCRIPTION SERVICES**

All subscriptions to Services are subject to acceptance by cPMT. Your subscription to the Services will be deemed accepted by cPMT unless You are notified to the contrary by cPMT within fifteen (15) days from the Effective Date. cPMT reserves the right to refuse to provide Services for any reason. Where applicable, cPMT also reserves the right to interrupt access to the Services to perform regular and emergency maintenance as needed.

### **C. SET-UP AND SUBSCRIPTION FEES**

The Set-up Fee and the Monthly Subscription Fee may include, but are not limited to, a per site set-up fee, concurrent user fee, data transfer fees, customization fees, and other variable fees as may be set forth on the [www.cpmt.net](http://www.cpmt.net) web site and listed in this document as Exhibit A. Notwithstanding any Term Subscription Fee, cPMT reserves the right to change all Fees in its sole discretion, which such change shall be effective upon notification of such change on the [www.cpmt.net](http://www.cpmt.net) web site, via e-mail, phone voice message or US Mail.

### **D. SUBSCRIPTION TERM**

The Agreement shall be effective as of the Effective Date. This Agreement shall automatically renew unless notice is provided in writing (email permissible) and received prior to the first day of the renewal. This Agreement is effective unless and until You or cPMT terminates the Agreement earlier, in accordance with the terms set forth herein. Regardless of the location of the Software, You are responsible for strict compliance with any and all of the terms and conditions of this license. This Agreement will terminate automatically if You fail to comply with any of the limitations or other requirements described herein, and such termination shall be in addition to and not in lieu of any criminal, civil or other remedies available to cPMT. When this agreement terminates, You must immediately cease using the Software.

### **E. PAYMENT**

You hereby agree to pay to cPMT the (1) Set-up Fees, plus the Subscription Fee, and You agree to pay all Fees as required herein by cPMT. You are obligated to pay all Fees irrespective of whether You received an invoice. All Fees are due in U.S. dollars. Late

payments will accrue interest at a rate of one and one-half percent per month. All payments required by this Agreement are exclusive of applicable taxes.

#### **F. RULES AND REGULATIONS REGARDING YOUR CONDUCT**

When You register for the Services, cPMT will provide You with a user ID and a password. You may use the Services or modify Your information, data and content only through such user ID and password. You are entirely responsible for maintaining the confidentiality of Your user ID and password. You are entirely responsible for any and all activities which occur under Your user ID and password. You agree to immediately notify cPMT of any unauthorized use of Your account or any other breach of security known to You. cPMT may, in its sole discretion, immediately terminate Your access to the Services or this Agreement if Your conduct fails to conform to this Section.

#### **G. OWNERSHIP RIGHTS**

The Software, Services and cPMT System are protected by United States copyright laws and international treaty provisions. As between You and cPMT, You acknowledge and agree that cPMT, its affiliates and/or its licensors owns all right, title, and interest in and to (i) the Services; (ii) the technology and software available on the Services; and (iii) all content (including without limitation, any images, text, software, music, sound, photographs, video, graphics, and "applets" incorporated into the Software) and all copyright, trade secret, patent, trademark and other intellectual property rights therein. You acknowledge that Your use of the Software does not transfer to You any ownership, title, or registrable interest of any kind to the intellectual property in the Software, and that You will not acquire any rights to the Software except as expressly set forth in this Agreement. Any use of the cPMT Technology other than to process Your Content within the scope of the Services provided by cPMT is not licensed and strictly prohibited. You agree that You will not download, transmit, reproduce, distribute or in any way exploit any cPMT Technology obtained through the Services without first obtaining the express written permission to do so from cPMT. This Agreement does not constitute a license to use cPMT's trade names, service marks or any other trade insignia. Any use of any of cPMT's trade names, services marks or any other trade insignia shall require cPMT's prior written consent.

#### **H. RESTRICTIONS**

You may not rent, lease, sublicense, loan, resell or directly or indirectly transfer the Software. You may only use the Software on a Device that is under Your exclusive control. You may not permit any parent, affiliate, subsidiary or any other third parties to benefit from the use or functionality of the Software, either directly or via a facility management, timesharing, service bureau or any other arrangement. You may not provide any access to the Software Products with the intention to process the data of another entity, unless You own more than fifty percent (50%) of that entity. You may not transfer any or all of the rights granted to You under this Agreement. You may not reverse engineer, decompile, or disassemble the Software, except to the extent the foregoing restriction is expressly prohibited by applicable law. You may not modify, or create derivative works based upon, the Software in whole or in part. You may not duplicate or copy any portion of the Software, unless otherwise set forth herein. You may not remove any proprietary notices or labels on the Software. All rights not expressly set forth hereunder are reserved by cPMT. cPMT reserves the right to periodically conduct audits upon advance written notice to verify compliance with the terms of this Agreement.

#### **I. LIMITED WARRANTY**

cPMT will use reasonable commercial efforts to ensure that the System will be accessible to connection from the Internet ninety eight percent (98%) of the time, excluding Scheduled Downtime. The "cPMT System" is defined as cPMT's information system, including the hosting servers that process information and the internal network components that connect these servers to the Internet backbone, but excluding the Internet backbone itself and the network by which You connect to the Internet backbone. There are no warranties, liabilities or remedies provided by cPMT's suppliers or any third party on the Software, the Services or the cPMT System.

#### **J. WARRANTY DISCLAIMER**

YOU EXPRESSLY AGREE THAT USE OF THE SERVICES IS AT YOUR SOLE RISK. THE SERVICES ARE PROVIDED ON AN "AS IS, WITH ALL FAULTS" AND "AS AVAILABLE" BASIS. EXCEPT AS SET FORTH IN PARAGRAPH L HEREIN, CPMT EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO

THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED. CPMT MAKES NO WARRANTY THAT THE SERVICES WILL MEET YOUR REQUIREMENTS, OR THAT THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE; NOR DOES CPMT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES OR AS TO THE ACCURACY OR RELIABILITY OF ANY INFORMATION OR DATA OBTAINED THROUGH THE SERVICES OR THAT DEFECTS IN ANY SOFTWARE, HARDWARE OR THE SERVICES WILL BE CORRECTED. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM CPMT OR THROUGH THE SERVICES SHALL CREATE ANY WARRANTY, WHETHER BY IMPLICATION, ESTOPPEL OR OTHERWISE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, SO SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU.

#### **K. LIMITATION ON LIABILITY**

YOU ARE SOLELY RESPONSIBLE FOR THE PROPER CONDUCT OF YOUR BUSINESS AND ALL OTHER MATTERS UNDER YOUR CONTROL. IN NO EVENT SHALL CPMT BE LIABLE TO YOU FOR ANY DAMAGES ARISING FROM OR RELATED TO OPERATION OF YOUR BUSINESS OR FAILURE TO OPERATE YOUR BUSINESS. THIS SECTION APPLIES TO ALL CLAIMS BY YOU IRRESPECTIVE OF THE CAUSE OF ACTION UNDERLYING YOUR CLAIM, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT (EVEN IF IN THE NATURE OF A BREACH OF CONDITION OR A FUNDAMENTAL TERM OR A FUNDAMENTAL BREACH), OR TORT, INCLUDING BUT NOT LIMITED TO NEGLIGENCE, STRICT LIABILITY, FRAUD, MISREPRESENTATION AND/OR OTHERWISE. REGARDLESS OF THE TYPE OF CLAIM OR THE NATURE OF THE CAUSE OF ACTION, YOU AGREE THAT IN NO EVENT WILL CPMT, OUR AFFILIATES, CONTRACTORS, SERVICE PROVIDERS, EMPLOYEES, AGENTS, OR LICENSORS, OR ANY OTHER PARTY INVOLVED IN CREATING, PRODUCING OR DELIVERING THE SERVICES OR CPMT TECHNOLOGY AVAILABLE IN THE SERVICES, BE LIABLE TO YOU IN ANY MANNER WHATSOEVER: (i) FOR ANY DECISION MADE OR ACTION OR NON-ACTION TAKEN BY YOU IN RELIANCE UPON THE INFORMATION PROVIDED THROUGH THE SERVICES; (ii) FOR LOSS OR INACCURACY OF DATA OR, COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY; (iii) FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF REVENUES, LOSS OF PROFITS OR LOSS OF REPUTATION, EVEN IF CPMT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE AGGREGATE LIABILITY OF CPMT AND THE CPMT AFFILIATES, ARISING FROM OR RELATING TO THIS AGREEMENT (REGARDLESS OF THE FORM OF ACTION OR CLAIM) IS LIMITED TO ANY AMOUNTS YOU HAVE PAID TO CPMT DURING THE TERM OF THIS AGREEMENT. YOUR SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO THE USE OF ANY SERVICES PROVIDED BY CPMT SHALL BE CANCELLATION OF YOUR SUBSCRIPTION TO THE SERVICES. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES; IN THOSE JURISDICTIONS OUR LIABILITY SHALL BE LIMITED TO THE EXTENT PERMITTED BY LAW.

#### **L. INDEMNIFICATION**

You agree to defend, indemnify, and hold cPMT harmless from and against any and all claims and liabilities, including reasonable attorneys' and experts' fees, related to or arising from (i) any breach of Your covenants under this Agreement; (ii) Your use of the Services; (iii) all conduct and activities occurring under Your user ID and password; (iv) any defamatory, libelous or illegal material contained within Your Content or Your information and data; (v) any claim or contention that Your Content or Your information and data infringes any third party's patent, copyright or other intellectual property rights or violates any third party's rights of privacy or publicity. cPMT reserves the right, at its own expense, to participate in the defense of any matter otherwise subject to indemnification from You, but shall have no obligation to do so. You shall not settle any such claim or liability without the prior written consent of cPMT, which shall not be unreasonably withheld.

#### **M. PRIVACY**

You hereby expressly agree that cPMT may use information regarding Your organization in queries with other information with identifying information removed, in creating a database of available information for analysis. Identifiable database information may be made available to specified subscribers provided cPMT receives notification in writing that such and agreement exists and the names of the organizations participating. In no event will cPMT disclose identifying information without proof of such and agreement. For more information regarding cPMT's protection of Your information, please consult cPMT's privacy policy located at [www.cpmt.net](http://www.cpmt.net) ("Privacy Policy").

## **N. TERMINATION**

cPMT may terminate this Agreement immediately if, based on cPMT's sole judgment, it determines that You have breached the provisions of this Agreement, including but not limited to, infringement or violation of any intellectual property right or privacy or publicity right of a third party, or failure to make payment when due of any Fees. The termination of this Agreement will terminate Your access to the Services. cPMT shall not be liable to You or to any third party for termination of the Services for any reason. The termination of this Agreement does not relieve You of Your obligation to pay any Fees accrued or payable to cPMT prior to the effective date of termination of this Agreement. Upon termination of this Agreement, cPMT reserves the right to maintain copies of Your data files and records, which copies shall be transmitted to You upon request. Upon termination of this Agreement, provisions which by their nature would be expected to survive termination shall survive and remain in full force and effect in accordance with their terms.

## **O. NOT FAULT TOLERANT**

The Software may contain technology, including support for programs written in JAVA (which is not fault tolerant), that is not fault-tolerant and is not designed or intended for use in hazardous environments requiring fail-safe performance, including without limitation, in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, weapons systems, direct life-support machines, or any other application in which the failure of the Software could lead directly to death, personal injury, or severe physical or property damage (collectively, "High Risk Activities"). cPMT expressly disclaims any express or implied warranty of fitness for High Risk Activities.

## **P. MISCELLANEOUS**

(a) Export Control Compliance. You agree to abide by U.S. and other applicable export control laws and not to transfer, by electronic transmission or otherwise, any content or software subject to restrictions under such laws to a destination prohibited under such laws, without first obtaining, and then complying with, any requisite government authorization. (b) Independent Contractors. This Agreement does not create any agency, employment, partnership, joint venture, franchise or other similar or special relationship between You and cPMT. Neither party will have the right or authority to assume or create any obligations or to make any representations, warranties or commitments on behalf of the other party or its affiliates, whether express or implied, or to bind the other party or its affiliates in any respect whatsoever. (c) No Assignment. Your rights and obligations under this Agreement shall not be transferred or assigned directly or indirectly without the prior written consent of cPMT. (d) Severability. If any provision of this Agreement or portion thereof is determined by a court of competent jurisdiction, or declared under any law, rule or regulation of any government having jurisdiction over the parties hereto, to be invalid, illegal or otherwise unenforceable, then such provision will, to the extent permitted by the court or government not be voided but will instead be construed to give effect to its intent to the maximum extent permissible under applicable law and the remainder of this Agreement will remain in full force and effect according to its terms. (e) Applicable Law, Jurisdictional Matters. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota, without giving effect to the conflict of laws. The federal and state courts of the State of Minnesota, shall have exclusive jurisdiction for disputes arising out of this Agreement. You expressly consent to (I) the jurisdiction of such courts; and (II) service of process being effected upon You by registered mail sent to the address You provide cPMT in conjunction with Your subscription for services, as may be changed from time to time by written notice actually received by cPMT. Unless prohibited by the law of Your jurisdiction, You waive any requirement that service of process or of any documents be made upon You pursuant to the provisions of the Hague Convention. The official language of this Agreement shall be English and all reports, notices and communications shall be in the English language. (f) Force Majeure. Except for payments due under this Agreement, neither party will be responsible for any failure to perform due to causes beyond its reasonable control (each a "Force Majeure") including, but not limited to, acts of God, war, riot, embargoes, acts of civil or military authorities, denial of or delays in processing of export license applications, fire, floods, earthquakes, accidents, breakdown of machinery, shortages of materials, inability to obtain labor, strikes or fuel crises, provided that such party gives prompt written notice thereof to the other. The time for performance will be extended for a period equal to the duration of the Force Majeure, but in no event longer than sixty (60) days. (g) Waiver. No failure of either party to exercise or enforce any of its rights under this Agreement will act as a waiver, or continuing waiver, of such rights. Rights may only be waived hereunder in a writing signed by

both parties. (h) Entire Agreement; Amendment. This Agreement and its Exhibits or Addenda, if any, are the complete and exclusive agreement between the parties with respect to the subject matter hereof, and supersede and replace any and all prior or contemporaneous agreements, communications, representations and understandings (both written and oral) regarding such subject matter. This Agreement may only be modified by a written document executed by both parties. (i) Notices Electronic Communications. All notices permitted or required under this Agreement may be sent by e-mail, fax, express mail, mail, or registered mail to the e-mail address, fax number, or address most recently provided and will be effective upon transmission. Evidence of successful transmission shall be retained (j) Electronic Signature. This Agreement may be signed by Electronic Signature (as defined below), and in counterparts, each of which counterpart will be deemed an original and all of which counterparts when taken together, will constitute but one and the same instrument. An Electronic Signature shall mean the intent to sign this Agreement as evidenced by one or more of the following affirmative actions taken by the signing party: (i) supplying a valid credit card number, (ii) typing Your name, title and email address when prompted, (iii) receiving a confirming email containing a copy of this Agreement and not objecting to it within twenty-four (24) hours, and/or (iv) accepting delivery of the Services. (k) Admissibility in Evidence. This Agreement shall be admissible in evidence in any medium in which it is available for viewing and/or execution, including without limitation (a) in any electronic version or manifestation and (b) in paper form or "hard copy."

**Q. cPMT CUSTOMER CONTACT**

If You have any questions concerning this Agreement, please email [info@cpmt.net](mailto:info@cpmt.net) or write to us at: cPMT, Inc., 120 Linden Court SW Rochester, MN 55902 USA.

Signed: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

Date: \_\_\_\_\_