



## Partner Program Agreement

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**BY ACCESSING, CLICKING ON AN "ACCEPT" BUTTON, OR OTHERWISE JOINING THE BERKSHIRE GREY, INC. PARTNER PROGRAM FROM BERKSHIRE GREY'S WEBSITE, YOU AGREE TO THE TERMS OF THE PARTNER PROGRAM ON BEHALF OF YOUR BUSINESS (REFERRED TO HEREIN AS PARTNER). IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF PARTNER, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND PARTNER TO THESE TERMS.**

This Partner Program Agreement (**PPA**), the applicable **Partner Program & Policy Guide** at <https://www.berkshiregrey.com/partners/partner-program/> and any order documentation for the Partner Program govern Partner's participation in Berkshire Grey's Application Partner Program and collectively form the **Agreement**. The **Partner Program & Policy Guide** includes important information regarding the Partner Program benefits and terms of the Partner Program that Partner must comply with. If Partner is participating in more than one Berkshire Grey Partner Program, each reference to the **Partner Program & Policy Guide** in this PPA shall mean each **Partner Program & Policy Guide** for which Partner has been accepted.

Partner may not participate in the Partner Program if it (i) does not agree with the terms and conditions of the Agreement, or (ii) is or becomes (in whole or in part) a direct competitor of Berkshire Grey, except with Berkshire Grey's prior written consent. Further, Partner may not join the Partner Program for purposes of monitoring Berkshire Grey or its services, their performance or functionality, or for any other benchmarking or competitive purposes.

### 1. Program Overview

**1.1. Enrollment.** To participate in this Partner Program, Partner must fulfill all participation qualifications set forth in the **Partner Program & Policy Guide**, and be accepted by Berkshire Grey.

**1.2. Benefits.** Participation in the Partner Program only entitles Partner to the Partner Program benefits, including certain materials and services, as specified in the **Partner Program & Policy Guide**. The Partner Program does not provide distribution rights to the Partner for Berkshire Grey solutions, nor does it contemplate any kind of reseller relationship between Berkshire Grey and Partner. Distribution and reseller rights would be governed by separate and additional Berkshire Grey agreements and application processes, if and when Berkshire Grey decides to offer enter into such relationships.

**1.3. Fees.** Participation in this Partner Program and the receipt of Partner Program benefits, may be subject to fees as described in the **Partner Program & Policy Guide** or order documentation presented to and accepted by Partner. Payment obligations are non-cancelable, and fees paid are non-refundable except as expressly permitted in the Agreement. Fees are exclusive of any customs or other duty, tax, and similar levies imposed by any authority resulting from Partner's participation in the Partner Program which will be invoiced in addition to any applicable fees.

**1.4. Partner Affiliates.** Each Partner affiliated entity that desires to be included as a member in this Partner Program must separately agree to the Agreement and take such other steps to enroll in our Partner Program unless Berkshire Grey agrees in writing that Partner's enrollment will cover any of its affiliates.

**1.5. Opt-in to Marketing.** Partner's participation in the Partner Program will serve as an opt-in to receive Berkshire Grey's marketing communications based on contact information supplied by Partner to Berkshire Grey in connection with the Partner Program. Partner will be presumed to have provided appropriate notices and have obtained appropriate consents, if required, from any persons or Partner's

personnel who are signed up to the Partner Program on Partner's behalf. Partner may elect to opt-out from receiving Berkshire Grey's marketing materials by contacting Berkshire Grey directly.

**1.6. Partner Announcement.** Each party may announce the Partner's participation in the Partner Program in a press release which shall be subject to a reasonable review, input and approval by the other party. An announcement may be set up as a mutual press release if both parties agree to do so.

**1.7. Partner-Sponsored Co-Marketing Activities and Expenses.** Berkshire Grey may work with participants in certain Partner Programs to co-market activities or events from time to time. To be eligible to sponsor and be reimbursed for any co-marketing activities or events organized with Berkshire Grey, Partner is required to accept the terms of the Berkshire Grey co-marketing online agreement referenced in the **Partner Program & Policy Guide**.

## **2. Compliance with Applicable Laws**

**2.1. Partner's Compliance with Applicable Laws.** Partner shall comply with all applicable laws, governmental regulations, ordinances, and judicial administrative orders, including, but not limited to, trademark and copyright laws, the United States Foreign Corrupt Practices Act, 15 U.S.C. § 78dd-1, *et seq.* (the **FCPA**) and applicable export control laws or regulations (collectively **Applicable Laws**) and shall not engage in any deceptive, misleading, illegal or unethical marketing activities, or activities that otherwise may be detrimental to Berkshire Grey, Berkshire Grey customers, Berkshire Grey's solutions, or to the public.

**2.2. Export Restrictions.** Berkshire Grey solutions and any related products or services, and data, information, programs and/or materials resulting therefrom, may be subject to international rules that govern the export and re-export of software. Partner shall comply with all applicable international and domestic export and re-export laws that apply to the Berkshire Grey solutions and any related products or services, as well as end-user, end-use and destination restrictions issued by national governments. The Berkshire Grey services are subject to the Export Administration Regulations (**EAR**) and thus may not be exported, re-exported, or downloaded by any person in any controlled countries under the EAR, which currently include Iran, North Korea, Cuba, Syria, and the Crimea region of Ukraine. The embargoed and sanction countries are subject to change as published by the Office of Foreign Assets Control of the Treasury Department of the United States. Moreover, Berkshire Grey solutions may not be exported, re-exported, or downloaded by any person or entity subject to U.S. or international sanctions regardless of location. Partner should consult <http://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern> for lists that Partner must check.

**2.3. Berkshire Grey's Compliance.** Berkshire Grey shall comply with Applicable Laws that are applicable to Berkshire Grey generally (i.e., without regard to Partner's and/or any customer's particular use of the Berkshire Grey solutions or Partner solutions) in its performance of its obligations hereunder.

## **3. Intellectual Property Ownership**

**3.1. Limited Ownership or License Rights Conferred.** Subject to the limited licenses and rights expressly set forth in the Agreement, nothing in the Agreement transfers or assigns to either party any of the other party's intellectual property or other proprietary rights in the other party's technology, products or services. The intellectual property and other proprietary rights in Berkshire Grey's technology, products and services, are defined herein as **Berkshire Grey's Property**.

**3.2. Berkshire Grey Trademarks.** Berkshire Grey's marks, including those identified in the **Partner Program & Policy Guide**, and otherwise used on Berkshire Grey's websites, are Berkshire Grey's trademarks or service marks and may not be used in any manner except as expressly permitted in the Agreement or the **Partner Program & Policy Guide**, or with Berkshire Grey's prior written consent. Consistent with the **Partner Program & Policy Guide**, Partner shall not incorporate or any other

Berkshire Grey mark or brand in any trade name, brand name, domain name, or other source identifying term. Partner shall not bid on or purchase any keyword which is Berkshire Grey's trademark in any keyword advertising service (such as, for example, Google AdWords) except with Berkshire Grey's prior written consent. Partner may not publish any advertisement that includes any Berkshire Grey trademarks without prior review and approval of Partner's proposed ad and/or related website by Berkshire Grey's legal and marketing teams. Partner may forward requests for review and approval to [PartnerOnboarding@berkshiregrey.com](mailto:PartnerOnboarding@berkshiregrey.com)

**3.3. Partner Trademark License.** Partner grants Berkshire Grey a nonexclusive, nontransferable, non-sublicensable, royalty-free license to use, solely for the purpose of identifying and promoting Partner's participation in this Partner Program and in connection with Berkshire Grey's rights, duties and obligations under the Agreement, Partner's marks including Partner's company name, and, if applicable, Partner's other marks or logos associated with its that relates to the Berkshire Grey solutions. Partner may withdraw its approval of any use of Partner's marks at any time in its sole discretion upon written notice to Berkshire Grey, which withdrawal shall be effective promptly but in no case more than thirty (30) days from the date of Partner's notice sent in accordance with **Section 11.6** (Manner of Giving Notice) below, provided that no such withdrawal will require the recall of any previously published or distributed materials.

**3.4. Competitive Developments and Activities.** Partner's participation in the Partner Program and Berkshire Grey's provision of the Partner Program does not preclude either party from: developing, marketing or providing products or services which may be competitive with products or services of the other party or entering into any business relationship with any other party; or assigning its employees in any way it may choose.

**3.5. Partner Feedback.** Partner grants Berkshire Grey a worldwide, perpetual, irrevocable, royalty-free, transferable, sublicensable, license to use and incorporate into its services any suggestion, enhancement request, recommendation, correction or other feedback provided by Partner relating to the operation of Berkshire Grey's or its affiliate's services.

## **4. Restrictions**

**4.1. Restrictions on Use of the Services.** Without affecting any other restrictions set forth in any other agreement or the Agreement, Partner's use of any Partner Program benefits, including Berkshire Grey's Property provided to Partner hereunder, is subject to additional restrictions. Specifically, Partner agrees **not to**:

- Remove or modify any program markings or any notice of Berkshire Grey's or Berkshire Grey's licensors' proprietary rights;
- Make the Berkshire Grey solutions, any materials delivered hereunder, or any materials resulting from the Berkshire Grey solutions available in any manner to any third party for use in the third party's business operations, other than as expressly permitted herein or in the **Partner Program & Policy Guide**;
- Use Berkshire Grey's Property in a manner that misrepresents Partner's relationship with Berkshire Grey or is otherwise misleading or that reflects negatively on Berkshire Grey or may harm Berkshire Grey's rights therein;
- Modify in any way any of Berkshire Grey's trademarks and/or associated logos (e.g., by combining Partner's company or brand name with Berkshire Grey's proprietary "BG" logos, including by co-branding products or services by blending Berkshire Grey's corporate logo with Partner's corporate logo without Berkshire Grey's permission);
- Use or duplicate Berkshire Grey's Property provided to Partner for any purpose other than as specified in the Agreement or make Berkshire Grey's Property available to unauthorized third parties; or

- Use Berkshire Grey's Property for Partner's own internal business operations or use or make Berkshire Grey's Property available in any manner to any third party for use in the third party's business operations or for any other commercial or production use, other than as expressly permitted in the Agreement.

## 5. Warranties; Disclaimers and Remedies

**Except as expressly set forth herein, Berkshire Grey makes no representation or warranty of any kind regarding Berkshire Grey's solutions, Berkshire Grey's marks, the Partner Program (including without limitation any Partner Program benefits), whether express, implied, statutory or otherwise, and specifically disclaims all implied warranties, including any implied warranty of merchantability, fitness for a particular purpose or non-infringement, to the maximum extent permitted by applicable law including with respect to the performance, functionality, quality, benefits or availability of all of the foregoing. Content is provided "as is," and as available exclusive of any warranty whatsoever. Each party disclaims all liability and indemnification obligations for any harm or damages caused by any third-party hosting providers. In no event will Berkshire Grey be liable to Partner (or to any individual or entity affiliated with Partner) for any claim, loss or damage arising out of the operation or availability of the services, Partner's services or any other Berkshire Grey product or service, made available, accessed or used as part of Partner's participation in the Partner Program.**

## 6. Term, Termination & Renewal

**6.1. Term.** The Agreement starts once Partner has accepted the Agreement and Berkshire Grey has confirmed that Partner has been accepted in the Partner Program by accepting Partner's payment of the Partner Program fee. The Agreement shall remain in effect unless terminated as set forth herein, provided that if Partner's participation in the Partner Programs terminates, the Agreement shall automatically terminate as of the end date of its participation in the Partner Program.

**6.2. Termination for Cause.** Either party may immediately terminate this PPA upon written notice to the other party if (i) the other party becomes the subject of a petition in bankruptcy or other proceeding relating to insolvency, or makes an assignment for the benefit of creditors, (ii) the other party publicly announces (including by reporting it in SEC filings) that it has reached agreement to acquire or be acquired by the terminating party's competitor, (iii) the other party breaches its confidentiality obligations under this PPA or infringes or misappropriates the terminating party's intellectual property rights, (iv) it determines, based on one or more customer or prospective customer complaints, that the other party's actions or statements creates a significant risk of harm to the terminating party's reputation or customer relationships, (v) the other party has committed fraud or misrepresentation with respect to entering into and/or the performance of the Agreement, (vi) a party learns of circumstances that give it reason to believe that the other party has engaged in illegal conduct or unethical business practices in connection with performance of the Agreement, (vii) the other party, or any of its owners or employees responsible for providing services under the Agreement have become the target of an investigation or prosecution by any governmental authority for alleged corruption or other violation of laws, or (viii) the other party has violated **Section 2** (Compliance with Applicable Laws) above including, violating a party's rights under trademark and copyright laws. Subject to the foregoing, either party may terminate this upon thirty (30) days' written notice to the other party of such other party's material breach if the breach is not cured during that period. Berkshire Grey may suspend Partner's assigned the Partner Program benefits during any period in which Partner is in breach of the Agreement, including its payment obligations. Termination of this PPA for cause shall be in addition to, and not in lieu of either party's other legal rights and remedies.

**6.3. Termination for Convenience.** Subject to **Section 6.4** (Effect of Termination) below, Berkshire Grey may terminate this PPA for convenience upon thirty (30) days' written notice to Partner.

**6.4. Effect of Termination.** Upon termination or expiration of this PPA, Partner shall cease to be a participant in the Partner Program and all of Partner's rights to receive the Partner Program benefits detailed in the Agreement, including any right to use Berkshire Grey's Property, shall cease. If Berkshire Grey terminates for convenience under **Section 6.3** (Termination for Convenience) or Partner terminates for cause under **Section 6.2** (Termination for Cause), Berkshire Grey will refund the pro-rated portion of any pre-paid Partner Program fees covering the period following such termination. Provisions that survive termination or expiration include those relating to limitation of liability, payment, and others which by their nature are intended to survive. Expiration or termination of this PPA will not relieve Partner of its obligation to pay the portion of the Program fees associated with its participation in the Partner Program leading up to the effective date of the expiration or termination. Also, any terms that by their nature extend beyond any termination shall remain in effect until fulfilled, and apply to successors and assignees.

## **7. Confidentiality**

**7.1. Definition of Confidential Information.** As used herein, "**Confidential Information**" means all confidential information disclosed by a party to the other party, whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Berkshire Grey's Confidential Information includes, but is not limited to Berkshire Grey's and third party software; any non-public information Partner has access to through Berkshire Grey's restricted access Partner portal; the Berkshire Grey solutions and Berkshire Grey's business and marketing plans, technology and technical information, products designs, and business processes. Partner's Confidential Information includes, but is not limited to Partner solutions and Partner's business and marketing plans, technology and technical information, products designs, and business processes. Confidential Information of each party shall include the Agreement and discussions regarding the Partner Program relationship. However, Confidential Information shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the disclosing party, (ii) was known to the receiving party prior to its disclosure by the disclosing party without breach of any obligation owed to the disclosing party, (iii) is received from a third party without breach of any obligation owed to the disclosing party, or (iv) was independently developed by the receiving party without breach of an obligations owed to the disclosing party.

**7.2. Protection of Confidential Information.** The receiving party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of the disclosing party for any purpose outside the scope of the Agreement and (ii) except as otherwise authorized by the disclosing party in writing, limit access to Confidential Information of the disclosing party to those of its and its controlled affiliates' employees and contractors who need that access for purposes consistent with the Agreement and who have signed confidentiality agreements with the receiving party containing protections not materially less protective of the Confidential Information than those herein. Neither party will disclose the terms of the Agreement or any order documentation related to the Partner Program to any third party other than its controlled affiliates, legal counsel and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its affiliates, legal counsel or accountants hereby accepts that it is responsible for such affiliate's, legal counsel's or accountant's compliance with this "Confidentiality" section.

**7.3. Compelled Disclosure.** The receiving party may disclose Confidential Information of the disclosing party if it is compelled by law to do so, provided the receiving party gives the disclosing party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the disclosing party's cost, if the disclosing party wishes to contest the disclosure. If the receiving party is compelled by law to disclose the disclosing party's Confidential Information as part of a civil proceeding to which the disclosing party is a party, and the disclosing party is not contesting the

disclosure, the disclosing party will reimburse the receiving party for its reasonable cost of compiling and providing secure access to such Confidential Information.

**7.4. Return of Confidential Information.** Upon request, receiving party agrees to: (a) promptly return or destroy, all Confidential Information and all reproductions thereof, (b) cause to be destroyed those portions of any materials containing Confidential Information; and (c) furnish disclosing party with confirmation of any such destruction.

## **8. Liability**

**8.1. Limitation of Liability.** The maximum aggregate liability of Berkshire Grey together with all of its affiliates arising out of or related to the Agreement shall not exceed the lesser of Partner's actual direct damages and the Partner Program fees paid by Partner in the 12 months preceding the first incident out of which the liability arose. The foregoing limitation will apply whether an action is in contract or tort and regardless of the theory of liability.

**8.2. Exclusion of Consequential and Related Damages.** In no event will either party or its affiliates have any liability arising out of or related to the Agreement for any lost profits, revenues, goodwill, or indirect, special, incidental, consequential, cover, business interruption or punitive damages, whether an action is in contract or tort and regardless of the theory of liability, even if that party or its affiliates have been advised of the possibility of such damages or if that party or its affiliates' remedy otherwise fails of its essential purpose. The foregoing disclaimer will not apply to the extent prohibited by law.

**9. Indemnification.** Partner will indemnify Berkshire Grey by (a) defending Berkshire Grey against any claim, demand, suit or proceeding made or brought against Berkshire Grey by an unaffiliated third party (i) alleging that Partner's products, services or any intellectual property, infringes or misappropriates the intellectual property rights of, or have otherwise harmed, such third party; (ii) based upon a representation made by Partner to such third party; or (iii) based upon Partner's breach of the Agreement, and (b) paying any damages, attorney fees, costs or other amounts finally awarded against Berkshire Grey as a result of, or any amounts payable in a settlement of such claims approved by Partner, provided Berkshire Grey (i) promptly gives Partner written notice of the claim, (ii) gives Partner sole control of the defense and settlement of the claim, and (iii) gives Partner all reasonable assistance, at Partner's expense for any Berkshire Grey out of pocket costs.

## **10. General**

**11. Relationship of the Parties.** The Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between Partner and Berkshire Grey, notwithstanding the use of the term "partner". Neither party will represent that it has any authority to assume or create any obligation, express or implied, on behalf of the other party, nor to represent the other party as agent, employee, franchisee, or in any other capacity. There are no third-party beneficiaries to the Agreement. Partner is not entitled to, and shall not, make any proposals, promises, warranties, guarantees, or representations on Berkshire Grey's solutions or any other matter on Berkshire Grey's behalf or in Berkshire Grey's name.

**11.1. Business Contact Information.** Berkshire Grey, its affiliates, and contractors of either, may, wherever they do business, store and otherwise process business contact information of Partner and its personnel, for example, name, business telephone, address, email, and user ID for business dealings with them. Where notice to or consent by the individuals is required for such processing, Partner will notify and obtain such consent. Berkshire Grey's privacy policy commitments at <https://www.berkshiregrey.com/privacy-policy/> shall apply to any information Berkshire Grey may collect in connection with the Partner Program.



**11.2. Partner Conduct Guidelines.** Berkshire Grey maintains a [Partner Code of Conduct](#) that addresses business conduct and related guidelines covering conflicts of interest, market abuse, corporate citizenship, anti-bribery and corruption, and fraud. Partner and its personnel shall comply with the Partner Code of Conduct.

**11.3. Entire Agreement.** Partner agrees that this PPA and the information which is incorporated into this PPA by written reference (including the **Partner Program & Policy Guide** and references to information contained in a URL and/or referenced policies), or any applicable order documentation related to the Partner Program or the purchase of any Partner Program benefits, or addendum attached hereto, constitutes the complete agreement between the parties relating to Partner's participation in the Partner Program. The Agreement supersedes and replaces any prior representations, written or oral, regarding Partner's participation in the Partner Program as well as any other online or click-through agreement that Partner may have previously entered into with Berkshire Grey governing Partner's participation in the Partner Program before the PPA version date for this document. If any term of the Agreement is found to be invalid or unenforceable, the remaining provisions will remain effective. To the extent of any conflict or inconsistency between the provisions in the body of this PPA, the **Partner Program & Policy Guide** and any order documentation, the terms of the order documentation shall prevail over the **Partner Program Policy Guide**, which shall, in turn, prevail over this PPA. The parties agree that any term or condition stated in a Partner purchase order or in any other Partner order documentation (excluding Berkshire Grey provided order forms) is void.

**11.4. Modifications.** This PPA and any order documentation that Berkshire Grey and Partner enter into may not be modified and the rights and restrictions may not be altered or waived except in a writing signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted, provided however, that (i) Berkshire Grey may modify or amend the **Partner Program & Policy Guide** from time to time as permitted therein; and (ii) Berkshire Grey may update the terms of the PPA effective as of the Partner's annual period of Partner Program participation provided Berkshire Grey has posted the new PPA thirty (30) days in advance of the start of such annual period, and Partner's participation in the Partner Program in such subsequent annual period will constitute its acceptance of such new PPA.

**11.5. Assignment.** Neither Partner nor Berkshire Grey may assign any rights or obligations under the Agreement without the prior written consent of the other (not to be unreasonably withheld or delayed), provided either party may assign the Agreement without consent of the other party in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of the assigning party's assets not involving a direct competitor of the other party.

**11.6. Manner of Giving Notice.** Except as otherwise specified in the Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, or (iii) the first business day after sending by email to [swpartnerprogram@berkshiregrey.com](mailto:swpartnerprogram@berkshiregrey.com) (in the case of notices to Berkshire Grey) or the email provided by Partner in connection with its account registration (in the case of Notices to Partner); provided email shall not be sufficient for notices of termination or an indemnifiable claim unless the recipient acknowledges receipt of the email notice.

Notices to Partner shall be addressed to the contact designated by Partner for Partner's relevant partner account, and in the case of billing-related notices, to the relevant billing contact designated by Partner. Notices to Berkshire Grey shall be addressed to the attention of the Partner Program Manager with a copy sent to Berkshire Grey's General Counsel at 140 South Road, Bedford, MA 01730.

**11.7. Cooperation on Disputes.** Partner shall cooperate with Berkshire Grey in regard to any inquiry, dispute or controversy in which Berkshire Grey may become involved and of which Partner may have knowledge. Such cooperation shall include disclosure of relevant documents and financial information,

and interviews of Partner's personnel. Such obligation shall continue after the expiration or termination of the Agreement.

**11.8. Governing Law and Jurisdiction.** Both parties agree to the application of the laws of the Commonwealth of Massachusetts, without regard to conflict of law principles. If any provision of the Agreement is invalid or unenforceable, the remaining provisions remain in full force and effect.