

OPEN DATA CENTER ALLIANCE, INC.

TERMS OF USE OF CLOUD ADOPTION FRAMEWORK

**THIS TERMS OF USE** (hereinafter the "Agreement"), dated as of the Effective Date (as defined below) governs the access and use of all components in the ODCA CLOUD ADOPTION FRAMEWORK (as defined herein), which has been developed by, and is owned by, the Open Data Center Alliance, Inc., a Delaware nonprofit corporation ("ODCA").

**THE PERSON ASSENTING TO THIS AGREEMENT HEREBY ACKNOWLEDGES AND AGREES THAT HE/SHE IS AN AUTHORIZED REPRESENTATIVE OF, AND HAS THE FULL AUTHORITY TO ASSENT TO THIS AGREEMENT ON BEHALF OF THE COMPANY/ USER THAT IS IDENTIFIED IN THE DOWNLOADING PROCESS (HEREINAFTER, THE "COMPANY"). THIS AGREEMENT GOVERNS THE USE OF THE ODCA CLOUD ADOPTION FRAMEWORK BY THE COMPANY AND BY ALL OF THE COMPANY'S CLIENTS (AS SUCH TERM IS DEFINED HEREIN).**

**IF COMPANY ELECTS TO ACCEPT THIS AGREEMENT BY CHECKING THE "I AGREE" BOX, THE COMPANY HEREBY AUTOMATICALLY AGREES TO BECOME BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT AS IT IS PRESENTED TO COMPANY AS OF THE DATE OF SUCH ASSENT (THE "EFFECTIVE DATE"). NO CHANGES (ADDITIONS OR DELETIONS) TO THIS AGREEMENT WILL BE ACCEPTED BY ODCA.**

**COMPANY'S RIGHT TO USE THE ODCA CLOUD ADOPTION FRAMEWORK IS CONDITIONED ON ITS ACCEPTANCE, WITHOUT MODIFICATION, OF THIS AGREEMENT.**

**IF COMPANY DOES NOT AGREE TO ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT, COMPANY WILL NOT HAVE ANY RIGHT TO USE ANY OF THE ODCA CLOUD ADOPTION FRAMEWORK.**

**COMPANY SHOULD DOWNLOAD AND PRINT THIS AGREEMENT FOR ITS RECORDS.**

**AGREEMENT**

**NOW, THEREFORE**, for good and valuable consideration, the receipt of which is hereby acknowledged, Company agree as follows:

1. **DEFINITIONS.** In addition to any other defined terms set forth herein, the following capitalized terms will have the meanings set forth below.
  - 1.1 "**Affiliate**" means an individual, corporation or other entity which directly (or indirectly through one or more intermediaries) controls at least twenty five percent (25%) of the outstanding voting shares or securities, is controlled by, or is under common control with the subject party.
  - 1.2 "**Business Restructuring**" is an effort by a Client to restructure the Client's IT systems, make internal system methodology changes, make internal staff changes and/or engage in other organizational restructuring in a way that adapts the foregoing to the requirements, recommendations, or other features of the ODCA CLOUD ADOPTION FRAMEWORK.
  - 1.3 "**Confidential Information**" has the meaning as set forth in Section 7 herein.
  - 1.4 "**Client**" means an individual, corporation, or other legal entity that has hired the Company and is using the Company's Services (while the Company is an ODCA Participant) to assist the Client in planning and implementing one or more of the Business Restructurings.
  - 1.5 "**Company's Services**" means the Company's professional services that assist and guide a Client in planning and implementing one or more the Business Restructurings.
  - 1.6 "**Effective Date**" has the meaning as set forth above.
  - 1.7 "**EULA**" has the meaning as set forth in Section 4 herein.
  - 1.8 "**Intellectual Property Right(s)**" means any patent, copyright, trade name, trademark, trade secret, know-how, or any other intellectual property right or proprietary right whether registered or unregistered and whether now known or hereafter recognized in any jurisdiction.
  - 1.9 "**ODCA Approved Statement(s)**" has the meaning as set forth in Section 4.2 herein.
  - 1.10 "**ODCA Policy/Policies**" has the meaning as set forth in Section 5 herein.
  - 1.11 "**ODCA CLOUD ADOPTION FRAMEWORK**" means, collectively the ODCA's Cloud Maturity Model 3.0 (V3) (sometimes referred to as the "CMM Usage Model 3.0") and the accompanying CMM 3.0 Evaluation & Planning Spreadsheet.

1.12 **"ODCA Participant"** means a "Participant" of the ODCA as such term is defined in, and subject to the terms and conditions of, the Bylaws of the ODCA and any of the ODCA Policies.

1.13 **"Term"** has the meaning as set forth in Section 10 herein.

1.14 **"Territory"** means the world.

## 2. **LICENSE GRANT.**

2.1 **License Grant.** Subject to the terms and conditions of this Agreement, and only while the Company is and remains an ODCA Participant in in good standing, ODCA hereby grants to Company ("**CLOUD ADOPTION FRAMEWORK License**"), only during the Term of this Agreement and only in the Territory, a non-exclusive, personal, limited, non-transferable, non-sublicensable, non-assignable, royalty-free license to only distribute the ODCA CLOUD ADOPTION FRAMEWORK to a Client as part of the Company's Services to such Client, and only to a Client who has first agreed to a valid EULA and only for use by such Client for that Client's Business Restructuring in accordance with such EULA.

2.2 **Additional Restrictions.** In addition to any other limitations set forth in this Agreement or any ODCA Policies, the above CLOUD ADOPTION FRAMEWORK License is explicitly subject to the following additional limitations:

(i) The CLOUD ADOPTION FRAMEWORK License: (a) is personal to Company and is not transferable, sub-licensable, or assignable to any other party; and (b) automatically terminates, without the requirement of any notice, when Company is no longer (for any reason whatsoever) an ODCA Participant.

(ii) Company's use, and each Client's use, of the ODCA CLOUD ADOPTION FRAMEWORK (in whole or in part) is subject to strict compliance with the requirements, terms and conditions set forth in the ODCA CLOUD ADOPTION FRAMEWORK and in all ODCA Policies.

(iii) Company will not (either directly or indirectly) do any of the following: (a) modify, alter, translate or creation derivatives of the ODCA CLOUD ADOPTION FRAMEWORK, whether in whole or in part; (b) alter, obscure or remove any copyright notices or any other proprietary rights notices placed in or on the ODCA CLOUD ADOPTION FRAMEWORK; or (c) use, or offer to use, the ODCA CLOUD ADOPTION FRAMEWORK in combination with, or integrate the ODCA CLOUD ADOPTION FRAMEWORK into, any standards, specifications, protocols, technical documentation, white papers or any other documentation of any other organization or party without the prior written consent of the ODCA.

(iv) Company may only identify itself as an **"ODCA licensee"** of the ODCA CLOUD ADOPTION FRAMEWORK and shall not take any action that implies that it has any ownership rights or any other rights in or to the ODCA CLOUD ADOPTION FRAMEWORK.

(v) Company may not use the CLOUD ADOPTION FRAMEWORK License (including, but not limited to, use of any of the contents of the ODCA CLOUD ADOPTION FRAMEWORK) in a manner that would imply endorsement or approval of any products, services, events or policy/position statements that have not be explicitly approved in writing by the ODCA.

3. **RESERVATION OF RIGHTS.** Company acknowledges and agrees that, except to the extent of the limited CLOUD ADOPTION FRAMEWORK License granted to Company pursuant to this Agreement: (i) ODCA retains and reserves all rights, title and interest in and to all of the ODCA CLOUD ADOPTION FRAMEWORK, all ODCA trademarks/service marks, all other ODCA Intellectual Property Rights, and any other ODCA Confidential Information (as defined herein); and (ii) by granting the CLOUD ADOPTION FRAMEWORK License to Company hereunder, ODCA does not in any way grant any rights, title or interest to Company in or to any of the ODCA CLOUD ADOPTION FRAMEWORK, any ODCA trademarks or service marks, any other ODCA Intellectual Property Rights, or any other ODCA Confidential Information.

## 4. **END USER LICENSE AGREEMENTS FOR CLIENTS.**

4.1 **End User License Agreements for Clients.** Company is obligated to require that each Client be bound by an end user license agreement ("**EULA**") with Company, provided, however, Company must obtain ODCA's prior written approval: (a) Company's standard form EULA which Company will use with its Clients; and (b) any modifications to that form EULA that Company proposes to use with any Client. Without limiting the generality of the foregoing, Company agrees that the EULA shall include at least the following specific terms:

(i) Clients will only be granted a non-exclusive, personal, non-sublicenseable, non-assignable, non-transferrable, and limited license to receive the ODCA CLOUD ADOPTION FRAMEWORK as part of the Company's Services for use by that Client only to carry out and operate the Client's Business Restructuring.

(ii) A EULA can only be initially granted to a Client during the time period that the Company is an ODCA Participant in good standing.

(iii) The rights granted to the Client pursuant to the EULA must be royalty-free. For the avoidance of doubt, the Company is not permitted to charge a special license fee to the Client under the EULA (aside from the normal fees that the Company charges the Client for the Company's Services).

(iv) Clients must agree to only use the ODCA CLOUD ADOPTION FRAMEWORK in strict compliance with the requirements, terms and conditions set forth in the ODCA CLOUD ADOPTION FRAMEWORK and in all ODCA Policies.

(v) Clients must acknowledge and agree: (a) that ODCA is the sole and exclusive owner of all of the Intellectual Property Rights contained in the ODCA CLOUD ADOPTION FRAMEWORK; and (b) to retain all of ODCA's copyright and other proprietary notices and legends contained in the ODCA CLOUD ADOPTION FRAMEWORK and on all copies thereof;

(vi) Each Client must agree that it will not do any of the following: (a) modify, alter, translate or creation derivatives of the ODCA CLOUD ADOPTION FRAMEWORK, whether in whole or in part; (b) alter, obscure or remove any copyright notices or any other proprietary rights notices placed on the ODCA CLOUD ADOPTION FRAMEWORK; or (c) use, or offer to use, the ODCA CLOUD ADOPTION FRAMEWORK in combination with, or integrate the ODCA CLOUD ADOPTION FRAMEWORK into, any standards, specifications, protocols, technical documentation, white papers or any other documentation of any other organization or party without the prior written consent of the ODCA.

#### 4.2 Additional Requirements Regarding Clients and EULAs.

(i) The EULA will contain only those specific ODCA statements, disclaimers and/or limitation of liability provisions which are included in the ODCA CLOUD ADOPTION FRAMEWORK or have been explicitly provided by ODCA to Company for inclusion in the EULA (hereinafter, the **"ODCA Approved Statements"**). Company agrees that: (a) except for the specific ODCA Approved Statements, the Company will not make or pass through any representations, warranties or guarantees to any Clients or to any other party regarding the ODCA CLOUD ADOPTION FRAMEWORK on behalf of ODCA (including, without limitation, any representation, warranties or covenants related to any specifications, features or capabilities of the ODCA CLOUD ADOPTION FRAMEWORK); and (b) Company shall be responsible for any such representations, warranties or guarantees it does makes to Clients or other third parties in violation of this Agreement.

(ii) Company is responsible for including in the EULAs all provisions that may be required by the laws of the jurisdictions in which the Client is located to the extent not in conflict with the terms of this Agreement. It is Company's responsibility to ensure that any distribution of the ODCA CLOUD ADOPTION FRAMEWORK to a Client is subject to a legally binding EULA and Company shall be responsible for enforcing the terms of the EULAs against all Clients. Company shall be financially responsible for all claims and damages to ODCA caused by Company's failure to include the required contractual terms in each EULA or for any breach of the EULA by any Client. Upon ODCA's request, Company will provide copies of such EULAs to ODCA. Company agrees that notwithstanding the foregoing, ODCA reserves all rights to enforce its Intellectual Property Rights against Clients at any time. Notwithstanding the above, except as expressly set forth in this Agreement, Company is not authorized to bind or to enter into any agreement, make any warranty or representation, or make any commitment on behalf of ODCA.

5. **COMPLIANCE WITH ODCA POLICIES** For purposes of this Agreement, **"ODCA Policy/ Policies"** means the following, as may be amended at any time or from time to time by ODCA: (a) ODCA's Certificate of Incorporation; (ii) ODCA's Bylaws; (ii) all terms and conditions set forth in the ODCA ODCA CLOUD ADOPTION FRAMEWORK governing the access and use of the ODCA CLOUD ADOPTION FRAMEWORK; and/or (iii) any other policies, procedures, protocols, rules, or regulations that ODCA may adopt at any time, and from time to time, which governs the access and/or use of the ODCA CLOUD ADOPTION FRAMEWORK. Company agrees that use of the ODCA COM Package by itself, or by its Clients, is explicitly conditioned on compliance with all of the ODCA Policies. ODCA has the right, from time to time and at any time, to amend any one or more of the ODCA Policies and such amendment shall be effective automatically as of the effective date announced by the ODCA when such amendment is released.

6. **ADDITIONAL DUTIES OF COMPANY.** In addition to Company's other obligations pursuant to this Agreement, Company shall have the following obligations:

(i) Company shall maintain a database of the name and contact information for all Clients that have been distributed an ODCA CLOUD ADOPTION FRAMEWORK by Company under this Agreement. On a quarterly basis the Company shall provide an updated copy of this database to ODCA. Upon termination of this Agreement for any reason, Company shall provide ODCA with an updated copy of said database.

(ii) Company shall inform ODCA if Company becomes aware of any facts indicating that any person is infringing any Intellectual Property Rights of ODCA.

(iii) Company shall make no false, misleading, deceptive or unauthorized statements, representations, warranties or covenants with regard to the ODCA or the ODCA CLOUD ADOPTION FRAMEWORK.

7. **CONFIDENTIAL INFORMATION.** Reference is hereby made to the meaning of "ODCA Confidential Information" as defined in, and as governed by, Section 9 of the ODCA's Bylaws. Company agrees that, to the degree any part of the ODCA CLOUD ADOPTION FRAMEWORK is included in the meaning of "ODCA Confidential Information", then all such portions of the ODCA CLOUD ADOPTION FRAMEWORK are hereby declared to be, shall be treated by Company as, and are governed by, the terms and conditions of Section 9 of the ODCA Bylaws (or any comparable provisions). The EULA shall also contain provisions comparable to this Section 7 which govern the Client's use, and duty to keep confidential, those portions of the ODCA CLOUD ADOPTION FRAMEWORK which are included in the meaning of "ODCA Confidential Information" under Section 9 of the ODCA's Bylaws.

## 8. **DISCLAIMER OF WARRANTIES; LIMITATION OF ODCA'S LIABILITY**

(i) COMPANY ACKNOWLEDGES AND AGREES THAT THE ODCA CLOUD ADOPTION FRAMEWORK AND ALL INFORMATION CONTAINED THEREIN IS PROVIDED "AS IS" AND THAT THE ODCA MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WITH RESPECT TO THE ODCA CLOUD ADOPTION FRAMEWORK.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE ODCA HEREBY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES AND/OR COVENANTS, WHETHER EXPRESS OR IMPLIED, WRITTEN OR ORAL, STATUTORY OR AT COMMON LAW, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, VALIDITY, AND/OR NON-INFRINGEMENT WITH REGARD TO THE ODCA COM PACKAGE AND THE INFORMATION CONTAINED THEREIN.

ODCA SHALL HAVE NO LIABILITY ARISING OUT OF THE DISTRIBUTION OR ANY OTHER USE OF THE ODCA CLOUD ADOPTION FRAMEWORK BY COMPANY, ANY OF ITS CLIENTS, OR ANY OTHER PARTY, WHETHER BASED UPON WARRANTY, CONTRACT, TORT OR OTHERWISE. NEITHER ODCA, NOR ANY OF ITS OFFICERS, DIRECTORS, EMPLOYEES NOR OTHER PERSONNEL NOR ANY OF ITS AFFILIATES SHALL BE LIABLE TO COMPANY, ANY OF ITS CLIENTS OR TO ANY OTHER PARTY FOR DIRECT OR INDIRECT DAMAGES, WHETHER SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, OR LOSS OF USE DAMAGES), AND WHETHER OR NOT FORESEEABLE, ARISING OUT OF, OR RESULTING FROM, COMPANY'S LICENSE TO USE, OR ANY OTHER USE OF, THE ODCA CLOUD ADOPTION FRAMEWORK.

THE INFORMATION CONTAINED IN THE ODCA COM PACKAGE IS FOR INFORMATIONAL PURPOSES ONLY AND THE ODCA MAKES NO REPRESENTATIONS, WARRANTIES AND/OR COVENANTS AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF, OR RELIANCE ON, ANY INFORMATION SET FORTH IN THE ODCA CLOUD ADOPTION FRAMEWORK, OR AS TO THE ACCURACY OR RELIABILITY OF SUCH INFORMATION.

(ii) IN NO EVENT SHALL ODCA OR ANY OF ITS OFFICERS, DIRECTORS, EMPLOYEES, OR PERSONNEL BE LIABLE TO COMPANY OR TO ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION ANY LOSS OF PROFITS, LOSS OF DATA OR EQUIPMENT DOWNTIME, EVEN IF ODCA HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. IN THE EVENT THAT ANY LIABILITY IS IMPOSED ON ODCA UNDER THIS AGREEMENT FOR ANY REASON WHATSOEVER, THE AGGREGATE AMOUNTS PAYABLE BY ODCA BY REASON THEREOF SHALL NOT EXCEED ONE THOUSAND US DOLLARS (\$1000).

(iii) Company acknowledges that the foregoing limitations are an essential element of the Agreement between the parties and that in the absence of such limitations the pricing and other terms set forth in this Agreement would be substantially different.

## 9. **REPRESENTATIONS & WARRANTIES BY COMPANY; INDEMNITY**

9.1 **Company's Representations & Warranties.** Company represents, warrants, and covenants the following: (i) the person assenting to this Agreement on behalf of the Company has the authority to bind the Company to this Agreement; (ii) that the Company has the corporate authority to enter into this Agreement; (iii) that the Company shall be in material compliance with all laws and regulations that affect Company's performance under this Agreement; and (iv) that the Company's distribution of, and its Client's use of, the ODCA CLOUD ADOPTION FRAMEWORK shall comply with all laws and regulations of the Territory.

### 9.2 **Indemnification.**

(i) Company hereby agrees to defend, indemnify and hold harmless ODCA and its successors, affiliates, and assigns, and their respective current and former officers, directors, members, stockholders, agents, employees, and attorneys (the "Indemnified Parties") from any and all Indemnified Claims. "Indemnified Claims" means any and all actions, causes of action, suits, proceedings, claims, demands, judgments, bona fide settlements, penalties, damages, losses, liabilities, costs, and expenses (including without limitation ODCA's reasonable attorneys' fees and costs and those necessary to interpret or enforce this Section 9.2 arising out of or relating to: (a) any breach by Company of any provision of this Agreement, including without limitation any of its representations, warranties and covenants; (b) any misrepresentation, fraud, or misconduct arising out of Company's or its agents' acts or omissions relating to this Agreement; (c) any negligent act or omission of Company or its agents relating to this Agreement; (d) any breach by Company of any of its obligations to its Clients in the performance of the Company's Services to the Clients; or (e) any breach of a EULA by any of the Company's Clients. Company will defend the Indemnified Parties, as defined above, from any and all Indemnified Claims, as defined above. Company will pay all reasonable attorney and expert fees and costs relating to such defense and will conduct all steps or proceedings in connection with such defense and as required to settle or defend such Indemnified Claims, including without limitation the employment of counsel reasonably satisfactory to ODCA.

(ii) ODCA will provide Company with notice of any Company Indemnified Claim. At Company's expense, ODCA will provide reasonable cooperation to Company in connection with the defense or settlement of any such claim. Company may not settle any Company Indemnified Claim on ODCA's behalf without first obtaining ODCA's written permission. Company will make any payments required of it under this Section 9.2 on ODCA's demand. Following ODCA's request, Company will not disclose such settlement and its terms to any third party, directly or indirectly, without ODCA's prior, written permission or an order from a court of competent jurisdiction.

## 10. **TERM AND TERMINATION**

10.1 **Term.** This Agreement shall commence as of the Effective Date and shall continue for a period of two (2) years unless earlier terminated in accordance with this Section 10; provided, however, this Agreement, will automatically renew for successive (1) year periods unless (i) Company is in breach of this Agreement; or (ii) ODCA provides written notice to Company of its intent not to renew this Agreement at least fifteen (15) calendar days prior to the beginning of the upcoming renewal term. The initial term of this Agreement and any renewal term(s) shall collectively be referred to as the “**Term.**”

## 10.2 **Termination.**

(i) This Agreement may be terminated by ODCA, at ODCA’s election, upon any one of the following events:(a) immediately upon the date that the Company is no longer an ODCA Participant in good standing; (b) upon the breach by Company of any provision of Section 7 (Confidential Information) if such breach is not cured (to ODCA’s satisfaction) within one (1) day after the date ODCA provides notice thereof to Company; or (c) upon the breach by Company of any other term, provision, covenant, representation or warranty set forth in this Agreement if the breach remains uncured for a period of sixty (60) calendar days after the date ODCA provides notice thereof to Company.

(ii) This Agreement may be terminated by Company upon the breach by ODCA of any term, provision, or covenant set forth in this Agreement if the breach remains uncured for a period of sixty (60) calendar days after the date Company provides written notice thereof to ODCA.

(iii) Upon the termination, expiration or cancellation of this Agreement, regardless of the cause (including, without limitation, a termination by Company), the following shall apply:

(a) subject to those limited rights granted to Company pursuant to Section 10.2 (iii)(c) below, all rights granted to Company hereunder, including without limitation the CLOUD ADOPTION FRAMEWORK License, shall immediately and automatically cease;

(b) Company shall cease distributing or using the CLOUD ADOPTION FRAMEWORK with any new Clients;

(c) provided Company is not in breach of this Agreement, and with regard to only existing Clients of Company who, as of the termination, expiration or cancellation date, have already received the ODCA CLOUD ADOPTION FRAMEWORK as part of the Company’s Services (hereinafter “**Existing Clients**”), those Existing Clients are permitted to continue to use the ODCA CLOUD ADOPTION FRAMEWORK pursuant to the EULA, and the Company is permitted to continue to use the ODCA CLOUD ADOPTION FRAMEWORK (within the scope of the CLOUD ADOPTION FRAMEWORK License set forth in Section 2.1) as part of the Company’s Services to those Existing Clients, subject, however, to the terms and conditions of this Agreement and the Client’s continued compliance with the EULA.

(d) return to ODCA or destroy (and certify the destruction thereof in writing), at ODCA’s option, any copies of any ODCA Confidential Information.

(iv) All valid EULAs which Company has already given to its Clients as of the date of cancellation, expiration or termination may remain in effect, subject, however, to the terms and conditions of this Agreement and the Client’s continued compliance with the EULA; provided, however, if ODCA has sued Company for breach of this Agreement and a court of competent jurisdiction has declared Company to be in such breach, then ODCA, at its election, may require that all such EULAs be assigned to ODCA.

(v) All provisions of this Agreement that by their terms, nature or context are intended by the parties to survive the termination, expiration or cancellation of this Agreement shall do so.

11. **PUBLIC ANNOUNCEMENTS.** Company and ODCA agree to discuss appropriate timing and means of public announcements regarding the matters covered by this Agreement and agree that all such releases and announcements (unless required by law) will be subject to prior review and approval of both Company and ODCA, except that ODCA shall not be required to seek Company’s review or approval of references to Company or to the transactions contemplated by this Agreement in reports to the other ODCA Participants prepared or disseminated by ODCA relating to the use or dissemination of its ODCA CLOUD ADOPTION FRAMEWORK.

## 12. **GENERAL PROVISIONS.**

12.1 **Entire Agreement.** This Agreement, including its Exhibit, represents the entire understanding of the parties as of the Effective Date with respect to the subject matter hereof, and supersedes all prior agreements, negotiations, understandings, representations, statements, and writings between the parties relating thereto.

12.2 **Change in these Terms of Use.** Company agrees that (i) ODCA may modify this Agreement at any time, and from time to time, and Company agrees that it will be bound by the version of this Agreement that is in effect on the date of the particular download of any component of the ODCA CLOUD ADOPTION FRAMEWORK, or, if applicable, any revised versions of the ODCA CLOUD ADOPTION FRAMEWORK; and (ii) the Company agrees that its act of downloading any component of, or any revised version of, the ODCA CLOUD ADOPTION FRAMEWORK is deemed to constitute acceptance by Company of all such amendments.

**12.3 Assignment of Agreement.** Neither this Agreement nor any interest herein is assignable by Company without the prior written consent of ODCA. Any attempted assignment or transfer by Company without the prior written consent of ODCA shall be null and void, and at ODCA's option, forthwith terminate and cancel this Agreement

**12.4 Relationship of Parties.** Nothing herein contained shall be deemed to create an agency, joint venture or partnership relation between the parties hereto. It is understood and agreed that Company is not, by reason of this Agreement or anything herein contained, constituted or appointed the agent or representative of ODCA for any purpose whatsoever, nor shall anything herein contained be deemed or construed as granting to Company any right or authority to assume or to create any obligation or responsibility, express or implied, for, on behalf of, or in the name of ODCA, or to bind ODCA in any way or manner whatsoever.

**12.5 Governing Law; Enforcement .** This Agreement shall be governed by the laws of the State of Delaware (USA), without reference to conflict of laws principles. ODCA is entitled to an injunction for Company's breach because money damages would not cure the harm from the breach. The exclusive jurisdiction for enforcing this Agreement is in Portland, Oregon, where both parties hereby consent to jurisdiction.

**12.6 Notices.** All notices or other communications that are required or permitted hereunder shall be in writing and sufficient if delivered personally, sent by prepaid overnight courier, sent by certified or registered mail, or sent by email or facsimile transmission, to the address set forth below or such other address as is subsequently specified in writing:

If to Company: to the Company's address identified in the downloading process.

If to ODCA:

Open Data Center Alliance, Inc.

c/o VTM, Inc.

3855 SW 153 Drive

Beaverton, OR 97006

Email: [admin@opendatacenteralliance.org](mailto:admin@opendatacenteralliance.org)

Any such communication shall be deemed to have been given when delivered if personally delivered, on the business day after dispatch if sent by overnight courier, on the fourth business day following the date of certified or registered mailing if sent by certified or registered mail; or on the date of an email/facsimile transmission if sent by email or facsimile transmission.

**12.7 Severability.** If any one or more of the provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

**12.8 Waiver.** The failure of any Party hereto to insist upon strict performance of any provision of this Agreement or to exercise any right hereunder will not constitute a waiver of that provision or right.

**12.9 Attorney's Fees.** If any suit or action is filed by any party to enforce this Agreement or otherwise with respect to the subject matter of this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees incurred in preparation or in prosecution or defense of such suit or action as fixed by the trial court and, if any appeal is taken from the decision of the trial court, reasonable attorney fees as fixed by a court of competent jurisdiction.

**12.10 Counterparts; Signatures.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall be deemed to be one and the same instrument. Facsimile or other electronically transmitted signatures shall be deemed original signatures.

**If You Have Questions:** If Company has any questions about this Agreement, then Company should write to ODCA at [admin@opendatacenteralliance.org](mailto:admin@opendatacenteralliance.org).