

CARASOFT RIDER

Please review and approve the Carahsoft Rider for Public Sector Entities.


The Carahsoft Rider for Public Sector Entities attached hereto as Exhibit A (“**Rider**”) contains mandatory terms for certain public sector contracts. By signing this document, Vendor (as identified below) agrees to the incorporation of these terms into all purchase orders placed by Carahsoft on behalf of Public Sector Entities (as defined herein) who buy Vendor’s products or services through Carahsoft and/or Carahsoft’s prime contractors.

These terms will take precedence over any conflicting terms in Vendor’s Terms of Service or similar document with Public Sector Entities (“**Commercial Supplier Agreement**”). These terms will also take precedence over any conflicting terms contained within the Cloud Purchasing Program Agreement or similar document (“**Vendor Agreement**”) you may have in place with Carahsoft Technology Corp., if applicable. Lastly, these terms will take precedence over any conflicting terms in any Statement of Work (or similar document) you may have in place with Carahsoft Technology Corp.

A “Public Sector Entity” is defined as one of the following:

- U.S. state or local government entity. This includes all applicable state agencies, counties, cities, municipalities, and similar entities within a state, the District of Columbia, or one of the territories of the United States.
- An Academic Institution is defined as an accredited institution, and must be organized and operated for educational purposes. The institution must receive funding (partial or full) from a federal, state, or local agency, and must meet one of the following criteria:
 - Public or private elementary, secondary, vocational school, correspondence school, junior college, university, post-graduate school such as a medical college, law school, or business school, management school board, school for disabled, scientific, research, or technical institutions accredited by U.S. Department of Education and State Board of Education, or, by associations recognized by U.S. Department of Education, including the district, regional, and State Administrative offices.
 - Administrative Offices or Board of Education for academic institutions as defined as:
 - A district, regional or state administrative office of public educational institution
 - Administrative entities organized and operated exclusively for private academic institutions
 - Other state or local government entities whose activities consist of administrative support or services for the advancement of public academic institutions.
 - Full-time or part-time faculty, staff, or, matriculated students in good academic standing at an accredited academic institution. Libraries associated with an accredited academic institution
 - Hospitals and teaching hospitals that are wholly owned and operated by an academic institution.
 - Higher Education Research laboratories that are associated with an academic institution, recognized by the U.S. Department of Education, and teach students as part of their research mission.

Vendor Name: OVH US LLC

Signature: 

Print Name: Jeffrey Gregor

Title: General Manager

Date: Feb 6, 2020

By signing above, I have read and agreed with all info regarding the Rider.

Carahsoft Rider for Public Sector Entities

1. **Applicability.** The terms and conditions in the Vendor Agreement and Commercial Supplier Agreement are hereby incorporated by reference to the extent that they are consistent with applicable public sector law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341(a)(1)(B)), the Contracts Disputes Act of 1978 (41 U.S.C. § 601-613), the Prompt Payment Act, 28 U.S.C. § 516 (Conduct of Litigation Reserved to Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent the terms and conditions in the Vendor Agreements or Commercial Supplier Agreement are inconsistent with applicable public sector law (i.e. *See* FAR 12.212(a)), they shall be deemed deleted and unenforceable under any resultant orders or contracts with Carahsoft.
2. **Contract Formation.** Where subject to FAR Sections 1.601(a) and 43.102, the Commercial Supplier Agreement must be signed by a duly warranted contracting officer, in writing. The same requirement applies to Commercial Supplier Agreement modifications affecting the rights of the parties. All terms and conditions intended to bind the Public Sector Entity must be included within the contract signed by the Public Sector Entity
3. **Termination.** If a Public Sector Entity cancels or terminates its corresponding order with Carahsoft, Carahsoft's reseller partner or a higher tier prime or subcontractor, as applicable, then Carahsoft will have the right to cancel the related order with Vendor in the same manner as the cancellation or termination is presented by the Public Sector Entity. In such a cancellation event, Carahsoft will notify Vendor as soon as reasonably possible on the specific details of the order cancellation.
 - Carahsoft may request cancellation or termination of the Commercial Supplier Agreement and applicable Public Sector Entity purchase order on behalf of the Vendor if such remedy is granted to it after conclusion of the or applicable dispute resolutions process or if such remedy is otherwise ordered by applicable jurisdictional court.
4. **Consent to Government Law / Consent to Jurisdiction.** Where applicable, the Commercial Supplier Agreement shall be subject to the Contracts Disputes Act of 1978 (41 U.S.C §§ 7101-7109), Federal Tort Claims Act (28 U.S.C. §1346(b)), or other applicable dispute resolution process.
5. **Dispute Resolution and Venue.** Any disputes relating to the Commercial Supplier Agreement shall be resolved in accordance with the FAR, the Contract Disputes Act, 41 U.S.C. §§ 7101-7109, or other applicable dispute resolutions process.
6. **Public Sector Entity Indemnities.** All Commercial Supplier Agreement clauses referencing Public Sector Entity's indemnities are hereby deemed to be deleted.
7. **Contractor Indemnities.** All Commercial Supplier Agreement clauses that (1) violate applicable judicial department's right (i.e. 28 U.S.C. 516) to represent the Federal Government (the "**Government**") in any case and/or (2) require that the Government give sole control over the litigation and/or settlement, are hereby deemed to be deleted.
8. **Renewals.** All Vendor Agreement and Commercial Supplier Agreement clauses that violate the AntiDeficiency Act (31 U.S.C. 1341, 41 U.S.C. 11) ban (or similar/applicable ban) on automatic renewal are hereby deemed to be deleted.
9. **Future Fees or Penalties.** All Commercial Supplier Agreement clauses that violate the AntiDeficiency Act (31 U.S.C. 1341, 41 U.S.C. 11), which prohibits the Government from paying

any fees or penalties beyond the Contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act, or Equal Access To Justice Act 31 U.S.C. 3901, 5 U.S.C. 504 are hereby deemed to be deleted.

10. **Travel and Expenses.** Out-of-pocket expenses identified in a quote, statement of work, professional services agreement (or similar agreement) must be submitted for payment no more than sixty (60) days after completion of services or such payment may be denied. Vendor shall ensure that travel expenses are incurred in accordance with the limitations set forth in FAR 31.205-46. Vendor will provide budgetary estimates for all travel and expense fees on its quotes (or Statement of Works/Professional Service Agreements) to Carahsoft.
11. **Limitation of Liability: Subject to the following:**
 - Public Sector Entity shall not be liable for any indirect, incidental, special, or consequential damages, or any loss of profits, revenue, data, or data use. Further, Public Sector Entity shall not be liable for punitive damages except to the extent this limitation is prohibited by applicable law. This clause shall not impair the Public Sector Entity's right to recover for fraud or crimes under applicable fraud statute, such as the False Claims Act, 31 U.S.C. §§ 3729-3733.
12. **Public Access to Information.** Vendor agrees that the Commercial Supplier Agreement contains no confidential or proprietary information and acknowledges the Commercial Supplier Agreement will be available to the public.
13. **Confidentiality.** Any provisions that require the Public Sector Entity to keep certain information confidential are subject to the Freedom of Information Act, 5 U.S.C. §552 (or the equivalent state statute), and any order by a United States Federal Court.

Carahsoft Rider - Part of Partner Agreement

Final Audit Report

2020-02-06

Created:	2020-02-06
By:	Peter Snyder (peter.snyder@corp.ovh.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAVKOCsTHHmeOfSh0F5QaFaaif2GtBfYn

"Carahsoft Rider - Part of Partner Agreement" History



Document created by Peter Snyder (peter.snyder@corp.ovh.us)

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Document e-signed by Jeffrey Gregor (jeffrey.gregor@corp.ovh.us)

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Signed document emailed to Peter Snyder (peter.snyder@corp.ovh.us), Suzanne Marisa (suzanne.marisa@corp.ovh.us) and Jeffrey Gregor (jeffrey.gregor@corp.ovh.us)

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Last Updated: July 10, 2019

TERMS OF SERVICE

This agreement between **OVH US LLC dba OVHcloud**TM, a Delaware limited liability company (“OVHcloud”), and you (“You,” “Your” or “Customer”) consists of (a) these Terms of Service, (b) the Additional Terms (as defined below) and (c) any OVHcloud Order Form (as defined below), if applicable (collectively, this “Agreement”). This Agreement governs Your use of the OVHcloud Services (as defined below).

BY EXECUTING AN OVHcloud ORDER FORM, CREATING AN ACCOUNT (AS DEFINED BELOW), USING OVHcloud SERVICES OR OTHERWISE INDICATING YOUR ACCEPTANCE OF THIS AGREEMENT, YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT YOU HAVE READ THIS AGREEMENT AND ARE BOUND BY THIS AGREEMENT, AND YOU HEREBY AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE AN INDIVIDUAL ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU HEREBY REPRESENT AND WARRANT TO OVHcloud THAT YOU ARE AUTHORIZED TO ENTER INTO THIS AGREEMENT ON BEHALF OF CUSTOMER AND BIND CUSTOMER TO THE TERMS AND CONDITIONS CONTAINED IN THIS AGREEMENT, IN WHICH CASE, THE TERM “CUSTOMER” WILL REFER TO SUCH ENTITY. IF YOU DO NOT ACCEPT ALL THE TERMS AND CONDITIONS IN THIS AGREEMENT OR ARE NOT AN AUTHORIZED AGENT FOR CUSTOMER, DO NOT EXECUTE AN OVHcloud ORDER FORM, CREATE AN ACCOUNT OR OTHERWISE USE THE OVHcloud SERVICES.

Customer may gain access to the OVHcloud Services by (a) executing an OVHcloud Order Form or (b) creating an online account at <http://us.ovhcloud.com/> (an “Account”), which includes and requires clicking a box indicating Customer’s acceptance of this Agreement. If Customer elects to purchase access to the OVHcloud Services through Customer’s Account, Customer will, among other things, select the following from the options presented: (i) the applicable OVHcloud Services; (ii) the Service Term (as defined below); and (iii) a payment plan and method.

OVHcloud reserves the right, at any time and from time to time, to update, revise, supplement, and otherwise modify this Agreement (including the Additional Terms) and to impose new or additional rules, policies, terms, or conditions on Your use of the OVHcloud Services. OVHcloud will communicate changes to this Agreement by posting the new version of this Agreement on its website at <https://us.ovhcloud.com/legal/terms-conditions/> or as otherwise determined by OVHcloud in its sole discretion, at which time such updated Agreement will be immediately effective. Your continued use of any OVHcloud Services after such notification of changes to this Agreement will constitute Your acceptance of any and all such changes. Notwithstanding the foregoing, OVHcloud will notify You of any material changes to this Agreement.

1. DEFINITIONS.

- a. “Additional Terms” means the Service Specific Terms, the Support Policies, the Data Processing Agreement, the Privacy Policy, the Third Party Terms and any other terms and conditions disclosed to Customer in an OVHcloud Order Form, if applicable, through Customer’s Account or in connection with accessing any OVHcloud Services, each of which are hereby incorporated by reference.
- b. “Applicable Law” means all applicable laws, regulations, ordinances, rules, codes and orders of governmental authorities having jurisdiction over OVHcloud and Customer.
- c. “Documentation” means written, published information accessible at <https://us.ovhcloud.com/> as updated from time to time.
- d. “Infringement Claim” means any third party claim that the use by Customer solely of the OVHcloud Services, as used as contemplated in this Agreement, infringes any patent, trademark or copyright of a third party, or misappropriates a trade secret (but only to the extent that the misappropriation is not a result of Customer’s actions) under the laws of the United States.
- e. “Intellectual Property Rights” means copyrights (including, without limitation, the exclusive right to use, reproduce, modify, distribute, publicly display and publicly perform the copyrighted work), trademark rights (including, without

limitation, trade names, trademarks, service marks, and trade dress), patent rights (including, without limitation, the exclusive right to make, use and sell), trade secrets, moral rights, right of publicity, authors' rights, contract and licensing rights, goodwill and all other intellectual property rights as may exist now and/or hereafter come into existence and all renewals and extensions thereof, regardless of whether such rights arise under the law of the United States or any other state, country or jurisdiction.

- f. "Login Credentials" means any user IDs, passwords, authentication keys or security credentials that enable Customer's access to and management of the OVHcloud Services.
- g. "OVHcloud Order Form" means a written ordering document executed by an authorized representative of each of OVHcloud and Customer that incorporates these Terms of Service by reference. The OVHcloud Order Form will specify the OVHcloud Services that Customer is purchasing, payment obligations related thereto and the duration of the Service Term.
- h. "OVHcloud Partner" means a third party reseller or distributor authorized by OVHcloud to sell OVHcloud Services.
- i. "OVHcloud Services" means OVHcloud's services, a current list of which is located at <https://us.ovhcloud.com/>.
- j. "Service Specific Terms" means the additional terms that govern specific OVHcloud Services, which are located at <https://us.ovhcloud.com/legal/service-specific-terms>.
- k. "Service Term" means the Initial Service Term (as defined below) plus any Renewal Term(s) (as defined below).
- l. "Support" means the support services provided by or on behalf of OVHcloud for the applicable OVHcloud Services purchased by Customer pursuant to an OVHcloud Order Form or through Customer's Account, which are described in the Support Policies.
- m. "Support Policies" means the statement of support, service level agreements and any other support policies for OVHcloud Services located at <https://us.ovhcloud.com/legal/support-policies/>.
- n. "Third Party Product" means any non-OVHcloud-branded products and services (including hardware) and non-OVHcloud-licensed software products.
- o. "Updates" means any updates, enhancements, modifications, improvements, patches and/or upgrades to any OVHcloud Services that OVHcloud generally makes available to its customers for no additional charge.
- p. "Usage Data" means any and all information reflecting the access or use of the OVHcloud Services by or on behalf of Users, including, but not limited to, visit-, session-, or stream-data and any statistical or other analysis, information or data based on or derived from any of the foregoing.
- q. "User Data" means all applications, files, data, information or other content uploaded to or published, displayed or backed up through the OVHcloud Services by Customers, Users or OVHcloud (when acting upon Customer's instructions as part of an OVHcloud Service), excluding Usage Data.
- r. "Users" means any users that access Your content or that use the OVHcloud Services under Customer's Login Credentials.

2. ACCESS TO OVHCLLOUD SERVICES.

- a. **EVALUATION.** If You access the OVHcloud Services on an evaluation or beta basis (the "Evaluation Service"), then You may use the Evaluation Service only for evaluation purposes and for a period of thirty (30) calendar days, beginning on the date OVHcloud provides Customer with Login Credentials, unless otherwise specified in writing by OVHcloud (the "Evaluation Period"). Notwithstanding any other provision of this Agreement, OVHcloud provides the Evaluation Service (i) free of charge and without Support and (ii) "AS IS" without indemnification or warranty of any kind but without prejudice to the statutory rights of consumers based in the EU. The Support Policies do not

apply to the Evaluation Service. Also, certain features or services described in the Service Specific Terms may not be available for the Evaluation Service. Continued use of the OVHcloud Services after the Evaluation Period requires that Customer (A) register for the applicable OVHcloud Services through Customer's Account or by executing an OVHcloud Order Form and (B) submit the applicable payment. Upon expiration of the Evaluation Period, You will not have access to the Evaluation Service or to any User Data therein.

- b. **ACCESS TO OVHcloud SERVICES.** Customer may access and use the OVHcloud Services for which it has registered (via an OVHcloud Order Form or through Customer's Account) solely for its own benefit and only in accordance with this Agreement. As a condition to using the OVHcloud Services, Customer must set up an authorized Account with Login Credentials. Customer will provide accurate and complete information in its Account and will update its information as necessary to keep it current. Customer may manage its Account through the OVHcloud portal available at: <https://us.ovhcloud.com/>. Customer is solely responsible for the security of its and its Users' Login Credentials. Customer will ensure that its Users do not share Login Credentials with others. Customer is responsible for any use that occurs under its Login Credentials, including any activities by Users. If Customer believes an unauthorized person has gained access to Login Credentials, Customer will notify OVHcloud as soon as possible by contacting Customer Support via chat, phone or by email directed at support@us.ovhcloud.com. Customer will ensure that Users comply with all terms and conditions of this Agreement and Customer remains responsible and liable for the acts and omissions of the Users. If Customer becomes aware of any violation by any User, Customer will immediately terminate that User's access to User Data.
- c. **SUPPORT.** Subject to the terms and conditions of this Agreement, OVHcloud will provide support to Customer for the OVHcloud Services in accordance with the then applicable Support Policy. Customer acknowledges that OVHcloud is not responsible for technical issues that cannot be identified as being primarily caused by the OVHcloud Services.

3. **ORDERING.**

- a. **PURCHASES.** Customer may purchase the right to access and use the OVHcloud Services by executing an OVHcloud Order Form or registering for the applicable OVHcloud Services through Customer's Account. Purchase of the OVHcloud Services includes access to any applicable Support during the Service Term.
- b. **PURCHASE ORDER.** Customer may elect to issue a purchase order to OVHcloud or an OVHcloud Partner, as applicable, by indicating its preference to do so on the applicable OVHcloud Order Form. If Customer so elects to issue a purchase order, Customer must issue such purchase order to OVHcloud or an OVHcloud Partner within five (5) business days from the Effective Date of any OVHcloud Order Form, or OVHcloud shall have the option to cancel the OVHcloud Order Form and its terms shall be null and void. Any additional or conflicting terms contained in any Customer purchase order, proposal or other document shall be deemed to be rejected by OVHcloud without need of further notice of objection, even if such document is acknowledged or accepted by OVHcloud, and regardless of any statement to the contrary which may be contained therein, and shall be of no effect or in any way binding upon OVHcloud.
- c. **PAYMENT TERMS.** Customer agrees to purchase the right to access and use the OVHcloud Services for the prices set forth in the OVHcloud Order Form or, if an OVHcloud Order Form is not executed, as set forth in OVHcloud's then-current applicable price list or as provided at checkout when registering for the applicable OVHcloud Services through Customer's Account ("Fees"). If Customer purchases through an OVHcloud Partner, all fees and other procurement and delivery terms will be agreed between Customer and the applicable OVHcloud Partner. Customer will pay all invoices issued by OVHcloud within thirty (30) calendar days of the date of the invoice or as otherwise set forth in an applicable OVHcloud Order Form. Except as otherwise provided in this Agreement or as otherwise provided by Applicable Law, all Fees are non-cancelable and non-refundable. Unless otherwise set forth in an OVHcloud Order Form, if applicable, or in the Service Specific Terms, all monthly or prepaid Fees will be due in advance and all Fees based on actual metered usage of an OVHcloud Service will be due in arrears. If any payment is more than fifteen (15) calendar days late (including if payment is late due to a credit card chargeback or insufficient funds), OVHcloud may, without limiting any remedies available to OVHcloud: (i) terminate this Agreement and/or any applicable OVHcloud Order Form; or (ii) suspend performance of or access to the applicable OVHcloud Services, until payment is made current. Customer will pay interest on all delinquent amounts at the lesser of 1.5% per month

or the maximum rate permitted by Applicable Law. All Fees are exclusive of all sales, use, excise, value added, withholding and other taxes, and all customs duties and tariffs now or hereafter claimed or imposed by any governmental authority upon the OVHcloud Services will be paid by Customer. OVHcloud reserves the right to increase Fees at any time, although increases in Fees for OVHcloud Services will not go into effect until the next renewal of the Service Term. EXCEPT AS REQUIRED BY APPLICABLE LAW OR AS EXPRESSLY SET FORTH IN THIS AGREEMENT, OVHcloud IS NOT OBLIGATED TO REFUND ANY FEES OR OTHER PAYMENTS ALREADY PAID, AND ANY CANCELLATION BY CUSTOMER WILL TAKE PLACE AT THE END OF THE APPLICABLE SERVICE TERM.

- d. **PAYMENT METHOD.** Customer will pay OVHcloud in accordance with the payment method identified in an OVHcloud Order Form or as established in Customer's Account, as applicable. All payment method options may include payment (i) by credit card, (ii) through an online account through a third-party provider, such as PayPal, or (iii) via eCheck/ACH. By providing any such credit card, online account or eCheck/ACH information, Customer authorizes OVHcloud to automatically charge or debit the selected payment method for the full amount due on a recurring basis (if applicable) until Customer notifies OVHcloud in writing or Customer updates Customer's Account with an alternative, authorized payment method. Customer will provide true, complete and accurate information with respect to the applicable method of payment and agrees to promptly contact OVHcloud and to otherwise update Customer's Account if any such information needs to be updated. Customer will ensure that Customer has sufficient funds or credit (as applicable) associated with the selected method of payment. Customer understands that the amounts charged or debited may vary and that this authorization will remain in effect until the expiration or termination of this Agreement. If an ACH payment is returned from the applicable bank account for insufficient or uncollected funds or for erroneous information, OVHcloud may reinitiate the returned ACH debit to the applicable bank account. Any amounts owed to OVHcloud that cannot be collected by ACH debit may be charged to any backup credit card on file for Customer.
- e. **EU CONSUMER POLICY.** If You are a consumer based in the EU, You have the right to cancel this Agreement within fourteen (14) calendar days of the date on which You requested the OVHcloud Services, without giving any reason. To exercise Your right to cancel, You must notify OVHcloud of Your decision to cancel this Agreement by contacting Customer Support via OVHcloud Manager or email directed to support@us.ovhcloud.com. To meet the fourteen (14) calendar day deadline provided above, it is sufficient for You to send Your notification concerning the exercise of the right to cancel before the cancellation period has expired. If You cancel this Agreement, we will reimburse to You all payments received from You without undue delay and not later than fourteen (14) calendar days from the day on which we are informed about Your decision to cancel the Agreement. We will make the reimbursement using the same means of payment as You used for the initial transaction, unless You have expressly agreed otherwise; in any event, You will not incur any fees as a result of the reimbursement. If You are a consumer based in the EU and You have agreed to the OVHcloud Services commencing immediately, You will be required to pay a pro-rated amount of the Fees applicable to the OVHcloud Services You have requested based on the initial Fees You have paid for the OVHcloud Services and the date on which You exercise Your statutory right to cancel the Agreement.

4. **CONFIDENTIALITY.**

As used in this Agreement, "Confidential Information" means, subject to the exceptions set forth in the following sentence, any information or data, regardless of whether it is in tangible form, disclosed by either OVHcloud or Customer (the "Disclosing Party") that the Disclosing Party has either marked as confidential or proprietary, or has identified in writing as confidential or proprietary within thirty (30) calendar days of disclosure to the other party (the "Receiving Party"); provided, however, that a Disclosing Party's business plans, strategies, technology, research and development, current and prospective customers, billing records, and products or services will be deemed Confidential Information of the Disclosing Party even if not so marked or identified. OVHcloud's Confidential Information includes, without limitation, the OVHcloud Services, any information related thereto and the Login Credentials. Information will not be deemed Confidential Information if such information: (a) is known to the Receiving Party prior to receipt from the Disclosing Party directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; (b) becomes known (independently of disclosure by the Disclosing Party) to the Receiving Party directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; (c) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the Receiving Party; or (d) is developed independently by the

Receiving Party without use of any Confidential Information of the Disclosing Party. Each party agrees that it will use the Confidential Information of the other party solely to perform its obligations or exercise its rights under this Agreement. Neither OVHcloud nor Customer will disclose, or permit to be disclosed, the other party's Confidential Information directly or indirectly, to any third party without the other party's prior written consent. Both OVHcloud and Customer will use commercially reasonable measures to protect the confidentiality and value of the other party's Confidential Information. Notwithstanding any provision of this Agreement, either party may disclose the other party's Confidential Information, in whole or in part: (i) to its employees, officers, directors, consultants and professional advisers (e.g., attorneys, auditors, financial advisors, accountants and other professional representatives) who have a need to know and are legally bound to keep such Confidential Information confidential by confidentiality obligations or, in the case of professional advisers, are bound by ethical duties to keep such Confidential Information confidential consistent with the terms of this Agreement; and (ii) as required by Applicable Law (in which case each party will, if permitted by Applicable Law, provide the other with prior written notification thereof and use its reasonable efforts to minimize such disclosure to the extent permitted by Applicable Law). Both OVHcloud and Customer agree to exercise due care in protecting the Confidential Information from unauthorized use and disclosure. In the event of actual or threatened breach of the provisions of this Section, the non-breaching party will be entitled to seek immediate injunctive and other equitable relief, without waiving any other rights or remedies available to it. Both OVHcloud and Customer will promptly notify the other in writing if it becomes aware of any violations of the confidentiality obligations set forth in this Agreement.

5. INTELLECTUAL PROPERTY.

- a. **OWNERSHIP.** This Agreement contains a limited right to access and use the OVHcloud Services during a Service Term, not a transfer of title to the OVHcloud Services. All Intellectual Property Rights in the OVHcloud Services belong exclusively to OVHcloud and its licensors. Customer is granted no licenses of any kind to any Intellectual Property Rights other than as expressly granted herein. Customer will not do, or cause to be done, any acts or things contesting or in any way impairing or tending to impair any portion of the right, title and interest of OVHcloud in and to the Intellectual Property Rights. Customer will not delete or in any manner alter the copyright, trademark, or other proprietary rights notices or markings that appear on the OVHcloud Services as delivered to Customer. Except as expressly authorized in this Agreement, You will not make any copies or duplicates of any OVHcloud Services without the prior written permission of OVHcloud. To the extent Customer provides any suggestions, comments or other feedback related to the OVHcloud Services to OVHcloud or its authorized third party agent(s) ("Feedback"), Customer hereby grants OVHcloud a worldwide, non-exclusive, perpetual, irrevocable, royalty-free, sublicensable, transferable license to copy, display, distribute, perform, modify and otherwise use such Feedback or subject matter thereof in any way and without limitation.
- b. **RESTRICTIONS.** Except as otherwise expressly provided under this Agreement, Customer will have no right, and Customer specifically agrees not to: (i) transfer, assign, sublicense or resell the OVHcloud Services to another person or entity, and Customer acknowledges that any attempted transfer, assignment, sublicense or resale will be void; (ii) make error corrections to, or otherwise modify or adapt, the OVHcloud Services or create derivative works based upon the OVHcloud Services, or permit third parties to do the same; (iii) reverse engineer or decompile, decrypt, disassemble or otherwise reduce the OVHcloud Services to human-readable form, except to the extent otherwise expressly permitted under Applicable Law notwithstanding this restriction; (iv) disclose, provide or otherwise make available trade secrets contained within the OVHcloud Services in any form, to any third party without the prior written consent of OVHcloud; or (v) use or access the OVHcloud Services (A) to develop any software application or similar products and services, (B) to spam or distribute malware, (C) in a way that could harm the OVHcloud Services or impair anyone else's use of it, (D) in a way intended to work around the OVHcloud Services' technical limitations, recurring fees or usage limits, (E) to violate any rights of others, (F) to try to gain unauthorized access to, test the vulnerability of, or disrupt the OVHcloud Services or any other service, device, data account or network or (G) in any application or situation where failure of the OVHcloud Services could lead to the death or serious bodily injury of any person or to severe physical or environmental damage.

6. DATA SECURITY.

- a. **PRIVACY AND DATA STORAGE.** OVHcloud's privacy and data storage practices are described in OVHcloud's data processing agreement located at <https://us.ovhcloud.com/legal/data-processing-agreement> (the "Data Processing Agreement"), which is hereby incorporated by reference. See also OVHcloud's privacy policy located at

<https://us.ovhcloud.com/legal/privacy-policy/> (the “Privacy Policy”), which is hereby incorporated by reference.

- b. **MONITORING.** OVHcloud has the right to verify Your compliance with this Agreement. If OVHcloud contacts Customer to verify compliance, Customer will provide information or other materials reasonably requested to assist in the verification (*For German customers only:* A Customer from Germany is only obliged to provide information necessary for such verification, available to the Customer and reasonably requested for such verification). OVHcloud may monitor the overall performance and stability of the infrastructure of the OVHcloud Services. Customer may not block or interfere with that monitoring. If OVHcloud reasonably believes a problem with the OVHcloud Services may be attributable to User Data or Customer’s use of the OVHcloud Services, Customer will cooperate with OVHcloud to identify the source of and resolve that problem.
- c. **PROTECTED INFORMATION.** You represent and warrant that You will not submit any unencrypted Protected Health Information, as defined in the Health Insurance Portability and Accountability Act (45 CFR 160.103), or any unencrypted personally identifiable information subject to regulatory protection under Applicable Law (collectively “Unencrypted Protected Information”) to OVHcloud, whether as part of the OVHcloud Services or otherwise. You represent and warrant that You will not submit any encrypted Protected Health Information, as defined in the Health Insurance Portability and Accountability Act (45 CFR 160.103), or any encrypted personally identifiable information subject to regulatory protection under U.S. law (collectively “Encrypted Protected Information”) to OVHcloud, whether as part of the OVHcloud Services or otherwise, unless we have entered into a Business Associate Agreement (“BAA”). In the event You will submit encrypted Protected Information in conjunction with Your use of the OVHcloud Services, You must contact OVHcloud at legal@corp.ovh.us to request a BAA. Notwithstanding anything to the contrary in this Agreement, You recognize and agree that OVHcloud will have no liability whatsoever under this Agreement or otherwise for any Unencrypted Protected Information or Encrypted Protected Information You provide in violation of this Section, and You agree to fully indemnify and hold harmless OVHcloud from any third party claims resulting from a violation or alleged violation of this Section.

7. USER DATA.

- a. **USER DATA RIGHTS.** As between Customer and OVHcloud, Customer retains all right, title, and interest in the User Data, except for the limited license expressly granted by Customer to OVHcloud in this Section 7. Customer hereby grants to OVHcloud a royalty-free, fully paid up, worldwide, sublicensable, non-transferable (except as set forth in Section 19(j)) right and license to copy, display, distribute, modify and otherwise use the User Data, solely as necessary to provide the OVHcloud Services to Customer. Customer further acknowledges that OVHcloud may collect Usage Data and may aggregate and/or anonymize Usage Data to use for statistical purposes and share samples of such aggregated and/or anonymized Usage Data with other third parties. (*For German customers only:* If Customer is from Germany, OVHcloud may only collect and aggregate anonymized Usage Data to use for statistical purposes and share samples of such aggregated and anonymized Usage Data with other third parties.)
- b. **CUSTOMER REPRESENTATIONS AND OBLIGATIONS.** Customer will only use the OVHcloud Services with User Data to which it has full right, title or license. Customer represents, warrants and covenants that its use of the OVHcloud Services and related backup to and storage of User Data complies and will comply with all Applicable Laws, including those related to data privacy, data security, international communication and the exportation of technical, personal or sensitive data. Customer will not, and will take commercially reasonable steps to ensure that each User does not, post content that: (i) may create a risk of harm, loss, physical or mental injury, emotional distress, death, disability, disfigurement, or physical or mental illness to anyone; (ii) may create a risk of any other loss or damage to any person or property; (iii) may constitute or contribute to a crime or tort; (iv) contains any information or content that is illegal, unlawful, harmful, abusive, racially or ethnically offensive, defamatory, infringing, invasive of personal privacy or publicity rights, harassing, humiliating to other people (publicly or otherwise), libelous, threatening, or otherwise objectionable; or (v) contains any information or content that You do not have a right to make available under any law or under contractual or fiduciary relationships. Customer represents and warrants that the User Data does not and will not violate any third-party rights, including any Intellectual Property Rights, and rights of publicity and privacy. If Customer becomes aware that any of the User Data or any User’s access to or use of the User Data violates this Agreement, Customer will take immediate action to remove the applicable part of User Data or suspend the User’s access. Customer will ensure that Customer’s use of the OVHcloud Services complies at all times with Customer’s privacy policies and all Applicable Laws, including any encryption requirements. Customer

is solely responsible for User Data. Except as provided in the Data Processing Agreement, Customer is responsible for protecting the security of User Data, including any access to User Data that Customer provides to its employees, customers or other third parties, and when it is in transit to and from the OVHcloud Services. Customer must take and maintain commercially reasonable steps regarding the security, protection and backup of User Data, which might include the use of encryption technology to protect User Data from unauthorized access. Customer is responsible for providing any necessary notices to Users and for obtaining any legally-required consents from Users concerning their use of the OVHcloud Services. Customer is responsible for any losses or other consequences arising from Customer's failure to encrypt or back up User Data. Customer will have and maintain appropriate policies and procedures for cybersecurity and to ensure compliance with its regulatory or legal obligations.

- c. **DIGITAL MILLENNIUM COPYRIGHT ACT.** OVHcloud respects the intellectual property rights of others, and we require our Customers to do the same. The contact information for our Digital Millennium Copyright Act ("DMCA") agent is as follows:

DMCA Agent
OVH US LLC
11480 Commerce Park Drive, Suite 500, Reston, Virginia 20191
copyright@corp.ovh.us

If you believe your copyright is being infringed by content on the OVHcloud network, please submit a notice of infringement via our Webform, located here: <https://us.ovhcloud.com/abuse/#!/copyright/>.

The Webform is the fastest and easiest way to report possible copyright infringement. OVHcloud is committed to managing copyright complaints responsibly and in compliance with applicable laws. In those circumstances where the United States DMCA is applicable, it is our policy to expeditiously process all valid notices of alleged copyright infringement. Please note that sending a DMCA notice initiates a statutorily-defined legal process and we will share your full notice, including your contact information, with the OVHcloud customer at issue. In most instances, OVHcloud does not have access to particular content hosted by OVHcloud customers. Thus, upon receipt of a valid DMCA notice, OVHcloud will forward your notice to the appropriate OVHcloud customer and require a timely and adequate response from the OVHcloud customer. You may also send your DMCA notice directly to the OVHcloud customer as well. OVHcloud has adopted and reasonably implemented a policy that provides for the termination in appropriate circumstances of OVHcloud customers who are repeat infringers. For additional details and information concerning OVHcloud's DMCA policies and procedures, please click <https://us.ovhcloud.com/legal/dmca-policy/>.

8. **THIRD PARTY PRODUCTS.**

Customer is responsible for any Third Party Products that a third party licenses, sells or makes available to Customer that Customer installs or uses with the OVHcloud Services. Customer's use of such Third Party Products is governed by separate terms between Customer and that third party. OVHcloud is not a party to and is not bound by any of those separate terms. Certain Third Party Products may carry a limited warranty from the third-party provider of such Third Party Products. To the extent required or allowed, if OVHcloud makes available to Customer a Third Party Product in connection with Customer's use of the OVHcloud Services, OVHcloud will pass through to Customer any such manufacturer warranties related to such Third Party Products. Notwithstanding the foregoing, Customer acknowledges that OVHcloud is not responsible for the availability or for the fulfillment of any Third Party Product warranty or for problems attributable to use of Third Party Products. ALL THIRD PARTY PRODUCTS ARE PROVIDED BY OVH ON AN "AS IS" BASIS. You are responsible for reviewing, accepting, and complying with any third party terms of use or other restrictions applicable to the Third Party Product. OVHcloud reserves the right to suspend or terminate any Third Party Products at any time. The third party terms applicable to Third Party Products made available by OVHcloud are available at <https://us.ovhcloud.com/legal/third-party-terms>, as may be modified from time to time (the "Third Party Terms").

9. **TERM AND TERMINATION.**

- a. **TERM.** This Agreement will be effective upon Customer's execution of an OVHcloud Order Form or when Customer otherwise clicks a box agreeing to this Agreement (during Account creation or otherwise) and, unless earlier terminated as set forth in this Agreement, continue in effect for the initial service term identified on the OVHcloud Order Form or

selected in the Account, as applicable (the “Initial Service Term”). Unless otherwise set forth in an OVHcloud Order Form, if applicable, this Agreement will automatically renew for additional periods of equal duration (each, a “Renewal Term”), unless either party gives notice of non-renewal at least thirty (30) calendar days prior to the end of the then-current term (or less if such Service Term is monthly).

- b. **TERMINATION.** In addition to any other termination rights set forth in this Agreement, (i) OVHcloud can terminate this Agreement immediately upon written notice to Customer if Customer breaches Section 7(b) and (ii) either party can terminate this Agreement upon written notice to the other party if (A) such other party breaches this Agreement (other than breaches of Section 7(b)) and fails to cure such breach within thirty (30) days of receipt of written notice thereof or (B) such other party (1) becomes insolvent, admits in writing its inability to pay debts as they mature or makes an assignment for the benefit of creditors; (2) becomes subject to control of a trustee, receiver or similar authority or any bankruptcy or insolvency proceeding; or (3) an equivalent or similar event or proceeding occurs in respect of the Customer in any jurisdiction (in each case of (1), (2) and (3), which, if initiated involuntarily, is not dismissed within forty-five (45) calendar days of its institution).
- c. **EFFECTS OF TERMINATION. THE TERMINATION OF THE OVHcloud SERVICES WILL CAUSE SUCH OVHcloud SERVICES TO CEASE FUNCTIONING AND RESULT IN CUSTOMER NOT BEING ABLE TO ACCESS ANY USER DATA. FOLLOWING TERMINATION OF THIS AGREEMENT, OVHcloud WILL DESTROY ALL USER DATA (WITHOUT PREJUDICE TO SECTION 9(d) BELOW).** The termination of this Agreement for any reason will not affect: (i) the obligations of Customer and OVHcloud to account for and pay to one another any amounts for which they are obligated by virtue of transactions or events which occurred prior to the effective date of termination; or (ii) any other obligation or liability which either Customer or OVHcloud has to the other under this Agreement and which, by its nature, would reasonably be expected to survive termination. The following Sections will survive any expiration or termination of this Agreement: 1, 3(b), 3(c), 4, 5, 6(c), 7(a), 9(c), 9(d), 11, 12, 13, 14, 15 and 19.
- d. **USER DATA POST EXPIRATION OR TERMINATION.** Before expiration or termination of the applicable Service Term, OVHcloud recommends that Customer ensures it places a copy of its User Data in a place that can be accessed without the OVHcloud Services. Provided that Customer is in compliance with all of the terms and conditions of this Agreement, OVHcloud will extend Customer’s ability to access the OVHcloud Services for fifteen (15) calendar days following the end of the Service Term if Customer notifies OVHcloud via email (directed to support@us.ovhcloud.com) prior to the end of the Service Term. In such event, (i) OVHcloud will enable Customer’s access to the OVHcloud Services for a maximum of fifteen (15) calendar days following the end of the Service Term (at no additional cost to Customer) for the sole purpose of enabling Customer’s retrieval of its User Data, and (ii) Customer’s use of the OVHcloud Services during such complimentary period is subject to the terms and conditions of this Agreement. OVHcloud is not responsible for the availability or accessibility of User Data following the later of (A) the expiration of the complimentary period should Customer make such request or (B) the end of the Service Term.

10. SUSPENSION.

- a. **GENERALLY.** OVHcloud may suspend Your use of the OVHcloud Services if OVHcloud reasonably determines: (i) Customer, or Customer’s use of the OVHcloud Services, is in breach of this Agreement; (ii) Customer fails to address OVHcloud’s request to take action as specified in Section 7(b); (iii) Customer’s use of the OVHcloud Services poses a security risk to the OVHcloud Services or other users of the OVHcloud Services; (iv) suspension is warranted pursuant to OVHcloud’s receipt of a subpoena, court order, or a request by a law enforcement agency; or (v) as otherwise expressly set forth in this Agreement. OVHcloud will give You notice before OVHcloud suspends You, subject to Applicable Law, and unless OVHcloud reasonably determines that providing the notice presents risk of harm to the OVHcloud Services or any person or property. OVHcloud is entitled to obtain injunctive relief if Customer’s use of the OVHcloud Services is in violation of any restrictions set forth in this Agreement.
- b. **EFFECT OF SUSPENSION.** You will remain responsible for all fees incurred before or during any suspension. You will not be entitled to any service credits under any applicable Service Level Agreement that You might have otherwise accrued during the period of suspension.

11. ALLOCATION OF RISK.

Customer acknowledges and agrees that OVHcloud has set its prices and entered into this Agreement and permitted Customer's access to the OVHcloud Services in reliance upon the disclaimers of warranty and the limitations of liability in this Agreement, that the same reflect an allocation of risk between OVHcloud and Customer (including the risk that a contract remedy may fail of its essential purpose and cause consequential loss), and that the same form an essential basis of the bargain between OVHcloud and Customer. If Customer is subject to Applicable Laws that prohibit Customer from indemnifying OVHcloud as set forth herein or prohibit Customer from entering into the risk allocation arrangement set forth herein, then the terms of such provisions of this Agreement will apply to Customer only to the fullest extent permitted by Applicable Law, it being understood that Customer and OVHcloud each wish to enforce the provisions of this Agreement to the maximum extent permitted by Applicable Law.

12. DISCLAIMER.

EXCEPT AS EXPRESSLY PROVIDED HEREIN AND TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, OVHcloud SERVICES ARE PROVIDED ON AN "AS IS" BASIS WITHOUT ANY WARRANTY, TERMS OR CONDITIONS WHATSOEVER. ALL OTHER WARRANTIES, TERMS OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF NON-INFRINGEMENT, TITLE, SATISFACTORY QUALITY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, ARE SPECIFICALLY EXCLUDED AND DISCLAIMED BY OVHcloud AND ITS LICENSORS, TO THE EXTENT PERMITTED BY APPLICABLE LAW. NEITHER OVHcloud NOR ITS LICENSORS WARRANT THAT THE OVHcloud SERVICES WILL MEET CUSTOMER'S REQUIREMENTS, THAT THE OVHcloud SERVICES WILL BE COMPATIBLE WITH CUSTOMER'S DEVICES, OR THAT THE OVHcloud SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. EXCEPT AS EXPRESSLY PROVIDED HEREIN AND SAVE TO THE EXTENT SUCH ALLOCATION OF RISK IS NOT PERMITTED BY APPLICABLE LAW, THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF OVHcloud SERVICES IS WITH CUSTOMER. IN NO EVENT WILL OVHcloud OR ITS LICENSORS BE LIABLE FOR ANY LOSS, LIABILITY, DAMAGES OR CLAIMS RELATED TO ANY REGULATORY OBLIGATIONS CUSTOMER MAY HAVE RELATED TO ITS USER DATA.

13. LIMITATION OF OVHcloud LIABILITY.

- a. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL OVHcloud BE LIABLE TO CUSTOMER FOR ANY LOST PROFITS, LOST SAVINGS, LOST OR CORRUPTED USER DATA, UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OF USER DATA, LOST REVENUE, BUSINESS INTERRUPTION, OR LOSS OF CAPITAL (IN EACH CASE, WHETHER DIRECT OR INDIRECT) OR FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OVHcloud SERVICES FURNISHED OR TO BE FURNISHED UNDER THIS AGREEMENT OR THE USE THEREOF, EVEN IF OVHcloud HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. EXCEPT FOR LIABILITY ARISING OUT OF OVHcloud'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 14, THE AGGREGATE LIABILITY OF OVHcloud IN CONNECTION WITH ANY AND ALL CLAIMS HOWSOEVER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OVHcloud SERVICES FURNISHED OR TO BE FURNISHED UNDER THIS AGREEMENT WILL IN ANY EVENT BE ABSOLUTELY LIMITED TO: (i) THE AMOUNT PAID TO OVHcloud FOR THE OVHcloud SERVICES UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PROCEEDING THE DATE THE DAMAGED PARTY NOTIFIES THE OTHER PARTY IN WRITING OF THE CLAIM FOR DAMAGES; OR (ii) IF GREATER, SUCH AMOUNT AS IS THE MINIMUM AMOUNT FOR WHICH OVHcloud WOULD BE LIABLE UNDER APPLICABLE LAW.
- b. IF CUSTOMER IS FROM GERMANY, NONE OF THE PROVISIONS OF THIS AGREEMENT SHALL EXCLUDE OR LIMIT ANY LIABILITY FOR DAMAGE FROM INJURY TO LIFE, BODY OR HEALTH OR ANY LIABILITY FOR ANY DAMAGE ARISING FROM GROSSLY NEGLIGENT OR INTENTIONAL BREACH OF DUTY OR OTHER CONDUCT.
- c. **FURTHER LIMITATIONS.** OVHcloud's licensors and service providers will have no liability of any kind under

this Agreement. Customer may not bring a claim under this Agreement more than eighteen (18) months after the cause of action arises. *For German customers only* Customer may not bring a claim under this Agreement more than eighteen (18) month after the cause of action arises and the Customer obtains knowledge of the circumstances giving rise to the claim and of the identity of the obligor, or would have obtained such knowledge if he had not shown gross negligence.

14. COPYRIGHT, PATENT, TRADE SECRET, AND TRADEMARK INDEMNITY.

- a. **INDEMNITY FOR OVHcloud SERVICES.** Subject to the remainder of this Section 14, OVHcloud will defend Customer against an Infringement Claim and indemnify Customer from the resulting costs and damages finally awarded against Customer to that third party by a court of competent jurisdiction or agreed to in settlement; provided that Customer: (i) promptly provides OVHcloud with notice of any Infringement Claim; (ii) grants OVHcloud sole control over the claim's defense and settlement, and any related action challenging the validity of the allegedly infringed patent, trademark or copyright; and (iii) reasonably cooperates in response to OVHcloud's requests for assistance. Customer may not settle or compromise any Infringement Claim without OVHcloud's prior written consent. Notwithstanding the foregoing, OVHcloud will have no obligation under this Section or otherwise with respect to any claim or award based on: (i) a combination of the OVHcloud Services with non-OVHcloud data, products, business processes or content, including User Data; (ii) use of the OVHcloud Services for a purpose or in a manner not specified in this Agreement or the Service Specific Terms, or otherwise in a manner for which the OVHcloud Services were not designed; (iii) any modification of the OVHcloud Services made without OVHcloud's express written approval; or (iv) any Evaluation Service. This Section 14(a) states Your exclusive remedy for any Infringement Claims save that where the Customer is a consumer based in the EU, nothing in this Section 14(a) will limit or exclude the Customer's statutory rights except as permitted by Applicable Law.
- b. **INDEMNITY FOR THIRD PARTY PRODUCTS.** To the extent required or allowed, OVHcloud will pass through to Customer any indemnities related to Third Party Products, if any. Notwithstanding the foregoing, Customer acknowledges that OVHcloud is not responsible for the fulfillment of any Third Party Product indemnities or for problems attributable to use of Third Party Products.
- c. **REMEDIES.** If any component of the OVHcloud Services becomes, or in OVHcloud's opinion is likely to become, the subject of an Infringement Claim, OVHcloud will at OVHcloud's option and expense: (i) procure the rights necessary for Customer to keep using such component; (ii) modify or replace such component to make it non-infringing; or (iii) terminate this Agreement and refund any pre-paid fees for any OVHcloud Services pro-rated for its remaining term.

15. INDEMNITY BY CUSTOMER.

Customer will, to the fullest extent permitted by Applicable Law, indemnify OVHcloud and its officers, directors, shareholders, employees and agents and their respective successors and assigns (collectively, the "OVHcloud Indemnified Parties") against and hold the OVHcloud Indemnified Parties harmless from any and all claims, liabilities, damages, costs and expenses, including reasonable attorneys' fees in connection with investigating, defending, or settling any claim relating to or arising out of any acts or omissions on the part of Customer which give rise to claims against the OVHcloud Indemnified Parties by third parties (unaffiliated with OVHcloud), provided any final settlement will require OVHcloud's consent (which will not be unreasonably withheld) if the final settlement or compromise does not provide for the unconditional and full release of the OVHcloud Indemnified Parties or if the final settlement or compromise requires the specific performance of the OVHcloud Indemnified Parties. In all events, OVHcloud will have the right to participate in the defense of any such suit or proceeding through counsel of its own choosing at OVHcloud's own cost. Customer will also indemnify and hold harmless the OVHcloud Indemnified Parties for any costs and expenses, including reasonable attorneys' fees, incurred in responding to any subpoena, search warrant, or court order requiring production of information or documents related to Customer.

16. U.S. GOVERNMENT PURCHASES.

OVHcloud provides the OVHcloud Services, including related software and technology, as "Commercial Items," as that term has been defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as such terms have been used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the OVHcloud Services are provided to U.S.

government customers (i) only as Commercial Items; and (ii) with only those rights as provided under the terms and conditions of this Agreement. If a government agency has a need for rights not conveyed under these terms, it must negotiate with OVHcloud to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

17. ANTICORRUPTION LAWS.

Customer and OVHcloud each acknowledge that it is familiar with the U.S. Foreign Corrupt Practices Act (the “FCPA”) and agrees to comply with its terms as well as any provisions of local law related thereto. Specifically, Customer and OVHcloud each are familiar with the provisions of the FCPA prohibiting the payment or giving of anything of value, including but not limited to payments, gifts, travel, entertainment and meals, either directly or indirectly, to an official of a foreign government or political party for the purpose of influencing an act or decision in his or her official capacity or inducing the official to use his or her party's influence with that government, to obtain or retain business involving the offering. Customer and OVHcloud each agree to not violate or knowingly let anyone violate the FCPA and that no payment it makes will constitute a bribe, influence payment, kickback, rebate, or other payment that violates the FCPA or any other applicable anticorruption or anti-bribery law.

18. YOUR OBLIGATIONS.

Customer represents and warrants that (a) Customer will use the OVHcloud Services only for lawful purposes, and will comply with all Applicable Laws and (b) Customer’s access to and collection, use, relocation, storage, disclosure and disposition of User Data will comply with all Applicable laws, including without limitation, all privacy and data security laws.

19. GENERAL PROVISIONS.

- a. **PUBLICITY.** OVHcloud must not use a Customer logo or trademark in any way without Customer’s prior written approval; provided, however, that OVHcloud may use Customer’s name and logo on OVHcloud’s website and marketing materials solely to identify Customer as an OVHcloud customer (without revealing any details about the parties’ relationship or this Agreement). Customer will reasonably consider serving as a reference for OVHcloud. If Customer has any issues with any use by OVHcloud of Customer’s name or logo, OVHcloud and Customer will cooperate reasonably to resolve the issue promptly to Customer’s satisfaction.
- b. **SEVERABILITY.** Every provision of this Agreement will be construed, to the extent possible, so as to be valid and enforceable. If any provision of this Agreement so construed is held by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, such provision will be deemed severed from this Agreement, and all other provisions will remain in full force and effect.
- c. **GOVERNING LAW.** Except as otherwise expressly provided herein, this Agreement is governed by the laws of the Commonwealth of Virginia, United States of America (excluding its conflict of law rules). The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. The courts in some countries will not apply U.S. law to some types of disputes. If You reside in one of those countries, then where U.S. law is excluded from applying, the laws of Your country of residence will apply to any dispute or difference arising out of or in connection with the Agreement.
- d. **DISPUTE RESOLUTION.** Subject to Section 19(e) below, the parties agree that any dispute, claim, or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation, or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate, shall be determined solely and exclusively by binding arbitration before a single arbitrator (the “Arbitrator”). The parties also agree that the arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures and shall be conducted in Washington, D.C., unless otherwise agreed to in writing by the parties. The parties further agree that this Agreement does not permit a class arbitration, even if the procedures or rules of JAMS (or other dispute-resolution organization or body) would otherwise permit it. **YOU AGREE THAT, BY ENTERING INTO THIS AGREEMENT, YOU AND OVHCLOUD ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY AND THE RIGHT TO PARTICIPATE IN A CLASS ACTION. NO CLASS ACTION OR REPRESENTATIVE OR PRIVATE ATTORNEY GENERAL**

THEORIES OF LIABILITY OR PRAYERS FOR RELIEF MAY BE MAINTAINED IN ANY ARBITRATION OR OTHER PROCEEDING UNDER THIS AGREEMENT. Either party may initiate arbitration by filing and serving a written demand for arbitration, which must be served on the other party by overnight mail with delivery confirmation to the addresses set forth in this Agreement. The parties covenant and agree that the arbitration hearing shall commence within one hundred eighty (180) calendar days of the date on which a written demand for arbitration is filed by any party hereto (the “Filing Date”). The Arbitrator’s decision and award (the “Award”) shall be made and delivered within two hundred forty (240) calendar days of the Filing Date, and shall set forth a reasoned basis for the Award. The Arbitrator shall not have the power to award damages in excess of traditional (*i.e.*, benefit of the bargain) compensatory damages in contract and may not award special, liquidated, multiple, punitive, or other damages, and each party hereby irrevocably waives any claim to such damages. In connection with the arbitration proceeding, the Arbitrator shall have the power to allow each party to (i) propound up to five (5) requests for the production of documents, including subparts, and (ii) conduct five (5) depositions of witnesses. Interrogatories may not be propounded by any party, and all discovery must be completed within sixty (60) calendar days after the selection of the arbitration, and no later than one hundred twenty (120) calendar days after the Filing Date. The Arbitrator shall also have the power to issue a subpoena for documents or information to any third-party witness within his or her jurisdiction. The parties agree that the entirety of the arbitration proceedings, including all documents and information produced by any party or non-party, all deposition testimony, and all pleadings, motions, or correspondence exchanged in connection with the arbitration proceeding, shall be kept confidential. Each Party hereby irrevocably agrees and submits to exclusive jurisdiction and venue in the federal district courts in the Eastern District of Virginia for entry of judgment on the Award or for relief in aid of arbitration; except, however, if the federal district courts in the Eastern District of Virginia decline to exercise jurisdiction, each Party agrees and submits to exclusive jurisdiction and venue in the state courts of Fairfax County in the Commonwealth of Virginia for the entry of judgment on the Award. If each of these courts decline to exercise jurisdiction, each party agrees and submits to jurisdiction and venue in any federal or state court located in the Commonwealth of Virginia for entry of judgment on the Award or for relief in aid of arbitration; and if each of those courts decline to exercise jurisdiction, judgment on the Award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking: (i) provisional remedies in aid of arbitration from a court of appropriate jurisdiction; (ii) a temporary restraining order from a court of appropriate jurisdiction related to the purposes of this Agreement; or (iii) relief from a small claims court for disputes or claims within the scope of such court’s jurisdiction. If the courts in Your country will not permit You to agree to the arbitration, jurisdiction and venue of the courts described above, then Your local jurisdiction and venue will apply to any dispute or difference arising out of or in connection with the Agreement. For EU consumers only - The European Commission’s online dispute resolution platform can be found here: <http://ec.europa.eu/odr>. OVHcloud is not obliged to submit to any alternative dispute resolution procedure, other than the arbitration before JAMS contemplated herein.

- e. **OTHER APPLICABLE LAW.** If You are otherwise subject to laws that prohibit Customer from agreeing to the foregoing governing law and/or venue provisions, then (i) the terms of such provisions of this Agreement will be deemed to be modified to reflect the governing law and/or venue required by Applicable Law; and (ii) Customer must, within thirty (30) calendar days of the commencement of its Service Term, notify OVHcloud (directed to legal@ovh.corp.us) to identify the Applicable Laws that apply to Customer and the resulting modifications to the governing law and/or venue provisions of this Agreement, without prejudice to the statutory rights of consumers based in the EU.
- f. **ENTIRE AGREEMENT.** This Agreement sets forth the entire Agreement and understanding between OVHcloud and Customer regarding the subject matter hereof and supersedes any previous or contemporaneous communications, representations, proposals, commitments, understandings, negotiations, discussions, understandings, or agreements (including non-disclosure or confidentiality agreements), whether oral or written, regarding the same subject matter. In the event of any conflict between these Terms of Service and an OVHcloud Order Form, if applicable, the terms and conditions set forth in these Terms of Service will govern unless expressly amended in such OVHcloud Order Form.
- g. **WAIVER.** The failure by OVHcloud at any time to enforce any of the provisions of this Agreement or any right or remedy available hereunder or at law or in equity, or to exercise any option herein provided, will not constitute a waiver of such provision, right, remedy or option or in any way affect the validity of this Agreement. The waiver of any default by OVHcloud will not be deemed a continuing waiver but will apply solely to the instance to which such waiver is directed.

- h. **HEADINGS.** The section headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or extent of such section or in any way affect such section.
- i. **NO JOINT VENTURE.** This Agreement will not be construed as creating any partnership, joint venture or agency relationship between OVHcloud and Customer.
- j. **ASSIGNMENT.** OVHcloud may freely assign, transfer and/or delegate its rights and obligations under this Agreement but Customer may not assign, transfer and/or delegate its rights and obligations under this Agreement without OVHcloud's prior written consent (not to be unreasonably withheld). Any attempted assignment or transfer in violation of this Section will be void. Subject to these limits, this Agreement will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.
- k. **NO THIRD PARTY BENEFICIARIES.** Other than as expressly provided in this Agreement, no third-party beneficiaries are intended or will be construed as created by this Agreement.
- l. **NOTICES.** Any notice delivered by OVHcloud to Customer under this Agreement will be delivered by email to the email address associated with Customer's account or by posting at OVHcloud Manager, except as otherwise set forth in this Agreement. Customer will direct legal notices or other correspondence, including any complaints, under this Agreement (including under any Additional Terms) to OVH US LLC dba OVHcloud, 11480 Commerce Park Drive, Suite 500, Reston, VA 20191, United States of America, Attention: Legal Department, or by email directed at legal@corp.ovh.us.
- m. **FORCE MAJEURE.** OVHcloud will not be liable for any delay or failure to perform any obligations under this Agreement due to any cause beyond OVHcloud's reasonable control, including acts of God, labor disputes or other industrial disturbances, systemic electrical, telecommunications or other utility failures, earthquakes, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism or war. If such a force majeure event occurs and continues for a period of more than thirty (30) calendar days, either party may terminate this Agreement upon written notice to the other party.
- n. **EXPORT COMPLIANCE.** Customer may not use or otherwise export or re-export the OVHcloud Services or any related software or technology except as authorized by United States law and the Applicable Laws of the jurisdiction in which the OVHcloud Services were obtained. In particular, but without limitation, the OVHcloud Services may not be exported or re-exported (i) into any U.S. embargoed country or region, or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List, Entity List or Unverified List. By using the OVHcloud Services, Customer represents and warrants that Customer is not located in any such country or on any such list. Customer also agrees that it will not use these products for any purposes prohibited by United States law. Customer is solely responsible for complying with all import, export, and re-export control laws, including but not limited to the Export Administration Regulations ("EAR") and the International Traffic in Arms Regulations ("ITAR"). Customer is also solely responsible for any applicable license requirements in connection with the OVHcloud Services, and OVHcloud makes no representations or warranties regarding the suitability of the OVHcloud Services for Customer's compliance with the EAR and/or ITAR.

20. QUESTIONS.

Any questions regarding this Agreement should be directed to OVHcloud using any of the contact methods located at <https://us.ovhcloud.com/about/contact/>.