

EARLY ADOPTER PROGRAM EVALUATION USE AGREEMENT

This Evaluation Use Agreement (this “**Agreement**”) is a legally binding agreement between the organization you represent (the “**Evaluation Participant**”) that is authorized to access the Evaluation Products (as defined below) and Office Ally, Inc., a Washington corporation (“**Office Ally**”). **You are required to electronically accept this agreement to use the Evaluation Products. By using the Evaluation Products, you, on behalf of the Evaluation Participant, enter into this Agreement between Evaluation Participation and Office Ally and you acknowledge and agree that such action will constitute Evaluation Participant’s legally binding electronic signature to this Agreement. You represent, warrant, and covenant, as applicable, that you have the legal authority to agree to the terms contained herein on behalf of the Evaluation Participant and you affirm that you intend for Evaluation Participant to be so bound. If you do not accept the terms of the Agreement, neither Evaluation Participant nor any employee, agent, or representative thereof may access or use the Evaluation Products.**

1. DEFINITIONS

For purposes of this Agreement, each word or phrase listed below shall have the meaning designated below. Other words or phrases used in this Agreement may be defined in the context in which they are used and shall have the respective meanings so designated.

- (1) “**Evaluation Participant Data**” means any data, information, content, or material that is provided by, entered, or input into the Evaluation Products by Evaluation Participant.
- (2) “**Evaluation Products**” shall mean certain products, software, or services made available to Evaluation Participant by Office Ally via Service Center for evaluation purposes subject to the terms of this Agreement including any modifications, corrections, improvements, updates, and upgrades made thereto.
- (3) “**Intellectual Property Rights**” shall mean all trade secrets, patents and patent applications, trade marks (whether registered or unregistered and including any goodwill acquired in such trade marks), service marks, trade names, business names, internet domain names, e-mail address names, copyrights (including rights in computer software), moral rights, database rights, design rights, rights in know-how, rights in confidential information, rights in inventions (whether patentable or not) and all other intellectual property and proprietary rights (whether registered or unregistered, and any application for the foregoing), and all other equivalent or similar rights that may subsist anywhere in the world.
- (4) “**Trial Period**” shall mean the period during which Evaluation Participant is authorized to use the Evaluation Products.

2. TERM AND TERMINATION

2.1. Term. This Agreement shall commence on the date that it is accepted by you (on behalf of the Evaluation Participant) and shall continue for a single term of one month unless earlier terminated in accordance with this Section 2. Notwithstanding anything else to the contrary, this Agreement shall be deemed terminated if any Trial Period would continue after the point of “commercial reasonableness” as defined under Section 1877 of the Social Security Act of 1935 and its implementing regulations.

2.2. Termination for Convenience. Either party may terminate this Agreement for any reason or no reason by providing the other party with written notice, such termination to be effective immediately upon the other party’s receipt of such notice. If Evaluation Participant is evaluating more than one Evaluation Product at the time of termination, Office Ally will identify which Evaluation Product(s) are subject to termination. Upon termination, Evaluation Participant will immediately: (a) cease any access or use of the Evaluation Product(s); (b) remove or uninstall any Evaluation Product(s); and (c) destroy any and all copies of the Evaluation Product(s) in Evaluation Participant’s possession.

2.3. Superseding License Agreement. If, after successful evaluation of any Evaluation Product, the parties may agree to negotiate a superseding definitive agreement. Upon execution of such definitive agreement, this Agreement shall terminate.

3. USE OF EVALUATION PRODUCTS

3.1. Proprietary Rights. Office Ally retains all right, title, and interest in and to the Evaluation Products and all improvements, enhancements, and modifications thereto, and derivative works thereof including, without limitation, all Intellectual Property Rights. All rights in and to the Evaluation Products not expressly granted herein are reserved by Office Ally.

3.2. License Rights. Office Ally hereby grants Evaluation Participant a temporary, fully revocable, royalty-free, non-exclusive, non-transferable, non-sublicensable license to access, display, and use the Evaluation Products for the purpose of performing a preliminary evaluation of the quality, function, and performance of the Evaluation Products. Evaluation Participant may not use the Evaluation Products in its normal course of business (“**Production**”) or in support of any Production services or activities.

3.3. Restrictions. Evaluation Participant will not, will not attempt to, will not direct or allow others to, and will not provide access to the Evaluation Products to enable any third party to (a) reverse engineer, decompile, disassemble (if and where applicable) or otherwise attempt to derive or access the source code or structure of the Evaluation Products; (b) provide, lease, or lend the Evaluation Products to any third party; (c) remove any proprietary notices or labels displayed on or in connection with the Evaluation Products; (d) create any derivative work of any of the Evaluation Products; (e) use the Evaluation Products for any unlawful purpose; (f) create any links to or from the Evaluation Products or “frame” or “mirror” any of the Evaluation Products or any content available therein; (g) upload, post, email, or otherwise transmit or post links to any material or content used on or in connection with the Evaluation Products that : (1) Evaluation Participant does not have the right to transmit under any law or regulation or under contractual or fiduciary relationships (such as inside information, or proprietary and confidential information learned or disclosed as part of this Agreement); or (2) contains software viruses, worms, Trojan horses, timebombs, trapdoors, or any other disabling code, files, or programs or repetitive requests for information designed to interrupt, destroy, interfere with, or limit the functionality of any computer hardware or software or telecommunications equipment or network or to diminish the quality of, interfere with the performance of, or impair the functionality of any network; and/or (h) infringe any Intellectual Property Rights of any non-party, or contribute to inducing or facilitating such infringement.

4. FEES

4.1. Fees. Office Ally shall provide pricing information (if any) for Evaluation Participant’s use of the Evaluation Products via electronic notice delivered through the Evaluation Products or by written agreement between Office Ally and the Evaluation Participant (or its duly authorized representative). It is understood between Office Ally and the Evaluation Participant that the consideration for the evaluation services between the parties is (i) Office Ally providing the Evaluation Products to the Evaluation Participant for Evaluation Participant’s use during the Trial Period, including any maintenance and other reasonably necessary services in connection with the Evaluation Products, and (ii) Evaluation Participant using and evaluating the Evaluation Products and providing reasonably requested feedback and assessment based on usefulness and functionality to Office Ally as an early adopter service as an independent contractor to Office Ally. Based upon the above, it is the understanding of Office Ally and the Evaluation Participant that the arrangement and services provided pursuant to this Agreement represent fair market value and are deemed to be commercially reasonable.

4.2. No Commitment. Nothing in this Agreement shall preclude or limit Office Ally from independently acquiring or developing competitive products or services for itself or third parties, or from providing competitive products or services to third parties, so long as Office Ally does not breach the obligations to Evaluation Participant it has assumed under this Agreement. Further, Evaluation Participant has no obligation or commitment to continue to use, purchase, or license any product, item, or service from Office Ally during or after the termination or expiration of this Agreement, including the Evaluation Products subject to this Agreement.

5. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES

THE EVALUATION PRODUCTS ARE PROVIDED ON AN “AS IS,” “WHERE IS,” AND “WITH ALL FAULTS” BASIS. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT OR ESTABLISHED BY APPLICABLE LAW, OFFICE ALLY DISCLAIMS ALL

REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE AVAILABILITY, FUNCTIONALITY, OR PERFORMANCE OF THE EVALUATION PRODUCTS, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. OFFICE ALLY IS NOT RESPONSIBLE FOR THE LOSS OF ANY EVALUATION PARTICIPANT DATA OR FOR ANY OTHER LOSS OR LIABILITY RELATED TO OR ASSOCIATED WITH EVALUATION PARTICIPANT'S INABILITY TO ACCESS OR USE THE EVALUATION PRODUCTS FOR ANY REASON.

6. CONFIDENTIAL INFORMATION

“**Confidential Information**” refers to the following items that Office Ally may disclose to Evaluation Participant: (a) any document Office Ally marks “confidential” or otherwise communicates or designates as “confidential” at the time of disclosure; (b) the Evaluation Products and any accounts, log ins, tokens, or credentials needed to access or use same; (c) the outputs or results of any of the Evaluation Products; and (d) any other information, including any trade secrets, that may reasonably be considered non-public whether or not marked “confidential.” Notwithstanding the foregoing, “Confidential Information” does not include information that (i) is in Evaluation Participant’s lawful possession at the time of disclosure; (ii) is independently developed by Evaluation Participant without use or reference to the Confidential Information; (iii) becomes publicly known, before or after disclosure, other than as a result of Evaluation Participant’s improper action or inaction; or (iv) is approved for release in writing by Office Ally. Evaluation Participant shall not use Confidential Information for any purpose other than as expressly designated in Section 3. Evaluation Participant shall disclose Confidential Information to its employees or contractors on a “need to know” basis and shall ensure that such employees or contractors execute non-disclosure agreements with terms no less restrictive as those set out herein. Evaluation Participant shall not otherwise disclose Confidential Information to any third party without Office Ally’s prior written consent. Evaluation Participant shall employ commercially reasonable methods to safeguard the Confidential Information.

7. INDEMNITY

7.1. Indemnification of Office Ally. To the full extent permitted under applicable law, Evaluation Participant will indemnify and hold harmless Office Ally, its directors, officers, agents, attorneys, employees, affiliates, subsidiaries, assigns, and successors in interest from, defend Office Ally against, pay any judgments awarded against Office Ally, and pay all reasonable costs (including attorneys’ fees) arising out of or resulting from any actual or alleged claims, liabilities, losses, suits, or damages asserted by any third party based on: (a) any breach by Evaluation Participant of this Agreement or improper use or misuse of the Evaluation Products (including, without limitation, any violation of applicable laws, rules, or regulations or this Agreement) by Evaluation Participant, or any other person(s) accessing the Evaluation Products through Evaluation Participant’s account(s); and (b) the conduct of any business by or on behalf of Evaluation Participant in connection with use of the Evaluation Products.

7.2. Mechanics of Indemnification. If Office Ally seeks indemnification under this Section 7, Office Ally will give prompt notice to Evaluation Participant concerning the existence of any such indemnifiable event; provided, however, the failure to give prompt notice shall not constitute a waiver of Evaluation Participant’s obligation to indemnify.

8. LIMITATION OF LIABILITY

EXCEPT FOR A BREACH BY EITHER PARTY OF ITS CONFIDENTIALITY OBLIGATIONS UNDER SECTION 6 OR BY EVALUATION PARTICIPANT OF ITS OBLIGATIONS UNDER SECTION 3, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY OR TO ANY NON PARTY FOR LOST PROFITS OR FOR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR EXEMPLARY DAMAGES ARISING OUT OF OR IN ANY MANNER CONNECTED WITH THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION AND WHETHER OR NOT SUCH PARTY HAS BEEN INFORMED OF, OR OTHERWISE MIGHT HAVE ANTICIPATED, THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL OFFICE ALLY’S TOTAL LIABILITY FOR ANY REASON AND UPON ANY CAUSE OF ACTION INCLUDING, WITHOUT LIMITATION, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION, AND OTHER TORTS, AND BREACH OF CONTRACT, EXCEED THE GREATER OF TEN DOLLARS (\$10) OR THE TOTAL AMOUNT OF FEES PAID OR PAYABLE BY EVALUATION PARTICIPANT IN CONNECTION WITH THE SPECIFIC

EVALUATION PRODUCT GIVING RISE TO SUCH LIABILITY.

9. MISCELLANEOUS

9.1. Relationship of the Parties. This Agreement does not constitute a joint venture or partnership arrangement between the parties, and it does not create any relationship of principal and agent, employer, and employee, or otherwise between the parties. Except as otherwise expressly provided for in this Agreement, neither party will be liable for any obligation incurred by the other.

9.2. Notice. Any notice, demand, or other communication (collectively, “**Notice**”) required or permitted under this Agreement shall be made in writing and shall be given or made by delivery in person, by courier service, by confirmed facsimile, or by registered or certified mail (postage prepaid, return receipt requested) if to Office Ally at 1300 SE Cardinal Court, Suite 190, Vancouver, WA 98683 and if to Evaluation Participant at the address set forth in the introductory table, above. Either party may change its address or representative for receiving Notices upon notice to the other.

9.3. Governing Law. The substantive laws of the State of Washington shall in all respects govern this Agreement as though this Agreement was entered into, and was to be entirely performed within, the State of Washington.

9.4. Waiver. No course of dealing, failure by either party to require the strict performance of any obligation assumed by the other hereunder, or failure by either party to exercise any right or remedy to which it is entitled, shall constitute a waiver or cause a diminution of the obligations or rights provided under this Agreement. No provision of this Agreement shall be deemed to have been waived by any act or knowledge of either party, but only by a written instrument signed by a duly authorized representative of the party to be bound thereby. Waiver by either party of any default shall not constitute a waiver of any other or subsequent default.

9.5. Interpretation. The provisions of this Agreement shall supersede the provisions of any shrink-wrap, clickwrap, or other provisions included with any Evaluation Product.

9.6. Modification. We may modify the terms of this Agreement at any time. We will post any such modifications via electronic notification through the Evaluation Products. Some functionality of the Evaluation Products may be limited if you chose not to accept the modified Terms.

9.7. Severability. If a court of competent jurisdiction declares any provision of this Agreement to be invalid, unlawful, or unenforceable as drafted, the parties intend that such provision be amended and construed in a manner designed to effectuate the purposes of the provision to the fullest extent permitted by law. If such provision cannot be so amended and construed, it shall be severed, and the remaining provisions shall remain unimpaired and in full force and effect to the fullest extent permitted by law.

9.8. Survival. The provisions of this Agreement that, by their nature and content, must survive the completion, rescission, termination, or expiration of this Agreement in order to achieve the fundamental purposes of this Agreement, shall so survive and continue to bind the parties.

9.9. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original.

9.10. Complete Understanding. This Agreement constitutes the complete understanding of the parties, and supersedes all prior or contemporaneous agreements, discussions, negotiations, promises, proposals, representations, and understandings (whether written or oral) between the parties, with regard to the subject matter hereof. Office Ally specifically acknowledges and agrees that it did not enter into this Agreement in reliance upon any agreement, promise, representation or understanding made by or on behalf of Evaluation Participant that is not contained herein.