Open Data Model®

Terms and Conditions

Important Notices

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Terms and Conditions

These terms and conditions are an agreement (the "Agreement") made between Open Data Model Limited ("ODM-Ltd") and any Legal Entity ("Member") who completes the registration process ("Registered Member") and uses the Open Data Model website ("Website"). This Agreement describes the terms and conditions upon which content on the Website is available for license and upon which Registered Member may have access to the Website and its contents.

ODM-Ltd may change this Agreement at any time by notifying Registered Member of the change by email or by posting a notice on the Website. Unless stated otherwise, any change takes effect from the date set out in the notice. Registered Member is responsible for ensuring it is familiar with the latest Agreement. By continuing to access and use the Content from the date on which the Agreement is changed, you agree to be bound by the changed Agreement.

1.   Definitions

"Open Data Model®" ("ODM") shall mean the proprietary software owned by Open Data Model LLC ("ODM-LLC") and licensed by ODM-Ltd comprising a comprehensive set of database application design, development and deployment functions to be accessed and used by Registered Members to create, view, update, modify and delete application database design and development artifacts and to collaborate with other Registered Members in carrying out these activities.

"Agreement" shall mean these terms and conditions.

"Legal Entity" shall mean any association, corporation, body corporate, partnership, proprietorship, trust, government department, or individual that has legal capacity to (1) enter into agreements or contracts, (2) assume obligations, (3) incur and pay debts, (4) sue and be sued in its own right, and (5) to be accountable for illegal activities.

"Data Model" or "DM" shall mean any abstract representation of data structures and the database design and development artifacts associated with them, including Content and Member Created Content made available under this Agreement.

"Owner" shall mean the Legal Entity that controls a DM (including the membership of a DM).

"Confidential Information" means the terms of this Agreement and any information that is not public knowledge and that is obtained from the other party in the course of, or in connection with, this Agreement. The Content in Private Domains, and the ODM and other intellectual property owned by ODM-LLC is, as between the parties to this Agreement, ODM-Ltd's Confidential Information. The Registered Member Data is the Registered Member's Confidential Information.

"Content" shall mean any Data Models and their associated metadata and documentation, on the Website from time to time. Content shall include new content contributed to the Website by ODM-Ltd, its licensors or a Registered Member.

"Member Created Content" shall mean database design and development artifacts that are created by a Registered Member using the ODM.

"Contribution" shall mean any Content, or Member Created Content that is added to the Website by the Registered Member using the tools provided by the Website.

"Contributor" shall mean ODM-Ltd, its licensors and Registered Member.

"Registered Member Data" means any information about an identifiable natural person supplied by the Registered Member to ODM-Ltd by any means.

"Registered Member" shall mean any Legal Entity that has completed the registration process and remains a member in good standing as determined by ODM-Ltd according to its Registration Agreement set forth at:

> http://www.opendatamodel.nz/

"Public Domain" or "PDM" shall mean a data containing region in ODM that os accessible to all Registered Members and operable only in ODM.

"Private Domain" shall mean a data containing region in ODM that is designated as a "Private Domain" by ODM-Ltd. The Owner of a Private Domain is the Legal Entity that has entered a subscription agreement with ODM-Ltd for that Private Domain ("Subscriber"). A Private Domain is accessible only by Registered Member(s) authorized by the Subscriber to have such access, and is operable only in ODM.

"Services" means the services and functionality provided by the Website and ODM from time to time.

2.   Grant of Agreements

Subject to the terms and conditions of this Agreement, ODM-Ltd hereby grants to the Registered Member a non-transferable, personal, perpetual, worldwide, non-exclusive, no-charge, royalty-free, irrevocable license to use ODM to:

(a) create and contribute Content to and collaborate on Content within the Public Domain while a Registered Member. Any license to the Registered Member to utilize a Private Domain of ODM shall be the subject of a separate agreement between ODM-Ltd and Registered Member; and

(b) export such Public Domain Content out of the ODM to other Public Domains of ODM, or to a Private Domain for which the Registered Member is an authorized representative of the Subscriber.

This Agreement does not grant permission to use the trade names, trademarks, service marks, or product names of ODM-Ltd.

3. Content

ODM-Ltd reserves the right to review any Content created hereunder at any time to ensure that it conforms to the laws of New Zealand and that it is not harmful to the reputation of ODM-Ltd. ODM-Ltd may remove any Content created hereunder at its discretion. All Content in a Public Domain (other than Registered Member Data, ie personal information) is visible to and freely useable by every other member.

4. Grant of Patent Licence

(a) For any invention relating to any Content, Registered Member hereby grants to ODM-Ltd a perpetual, worldwide, non-exclusive, no-charge, royalty-free, irrevocable patent license to make, have made, use, offer to sell, sell, import, and otherwise transfer the Content, and for ODM-Ltd to grant non-exclusive licenses to others for commercial and non-commercial uses of the new Content.

5. Contributions

Unless Registered Member explicitly states otherwise, any Contribution intentionally submitted for inclusion in ODM by Registered Member shall be governed by this Agreement, without any additional terms or conditions.

6. Trademarks

This Agreement does not grant any Legal Entity including the Registered Member permission to use the trade names, trademarks, service marks, or product names of ODM-Ltd, except as required for reasonable and customary use in describing the origin of the Content and reproducing the content of the NOTICE file.

7. Confidential Information

7.1 The Content and Website contain copyrighted material, trade secrets and other proprietary material.

7.2 Each party must, unless it has the prior written consent of the other party:
   a. keep confidential at all times the Confidential Information of the other party;
   b. effect and maintain adequate security measures to safeguard the other party's Confidential Information from unauthorised access or use; and
   c. disclose the other party's Confidential Information to its personnel or professional advisors on a need to know basis only and, in that case, ensure that any personnel or professional advisor to whom it discloses the other party's Confidential Information is aware of, and complies with, the provisions of clauses 7.2a and 7.2b.

7.3   Permitted disclosure: The obligation of confidentiality in clause 8.2a does not apply to any disclosure or use of Confidential Information:

     a.   for the purpose of performing the Agreement or exercising a party's rights under the Agreement;

     b.   required by law (including under the rules of any stock exchange);

     c.   which is publicly available through no fault of the recipient of the Confidential Information or its personnel;

     d.   which was rightfully received by a party to the Agreement from a third party without restriction and without breach of any obligation of confidentiality.

8.   Data and Data Security

8.1   The Registered Member acknowledges that:

     a   ODM-Ltd may require access to the Registered Member Data to exercise its rights and perform its obligations under the Agreement including to provide the Services; and

     b   to the extent that this is necessary but subject to clause 8, ODM-Ltd may authorise a member or members of its personnel to access the Registered Member Data for this purpose.

8.2   The Registered Member must arrange all consents and approvals that are necessary for ODM-Ltd to access the Registered Member Data as described in clause 9.1.

8.3   Agent:

     a   The Registered Member acknowledges and agrees that to the extent Registered Member Data contains personal information, in collecting, holding and processing that information through the Services, ODM-Ltd is acting as an agent of the Registered Member for the purposes of any applicable privacy law.

     b   The Registered Member must obtain all necessary consents from the relevant individual to enable ODM-Ltd to collect, use, hold and process that information in accordance with the Agreement.

8.4   ODM-Ltd will:

     a   comply with all applicable laws when accessing, storing or transmitting the Registered Member Data;

     b   provide reasonable information and assistance to the Registered Member if the Registered Member wishes to undertake an audit of the implementation and management of security measures relating to ODM and the Registered Member Data;

     c   provide the Registered Member with copies of its most recent external audit reports relating to security measures for ODM and the Registered Member Data.

8.5   Backups of Registered Member Data: While ODM-Ltd will take standard industry measures to secure and back up all Registered Member Data stored using ODM, the Registered Member agrees to keep a separate back-up copy of all Registered Member Data provided by it to ODM.

8.6   International storage of Registered Member Data: The Registered Member agrees that ODM-Ltd may store Registered Member Data (including any personal information) in secure servers in New Zealand and Australia and may access that Registered Member

Data (including any personal information) in Australia and New Zealand from time to time.

8.7 If ODM-Ltd becomes aware that:

(a) any unauthorised person has obtained, attempted to obtain, or may obtain access to the Services or ODM or any Registered Member Data;

(b) any person has used or attempted to use any Registered Member Data for purposes not authorised or permitted by this Agreement;

(c) any unauthorised access or other incident (including compromise or unauthorised exfiltration of data) has occurred or may occur that threatens or may threaten the security or integrity of the Services or ODM or any Registered Member Data,

it will notify the Registered Member as soon as reasonably practicable; and

(d) where the incident concerns unauthorised access, promptly take such steps as are reasonably available to it to identify the person or persons who have gained or attempted to gain unauthorised access; and

(e) take reasonable steps to stop such unauthorised access or incident and prevent its reoccurrence.

8.8 Viruses: If ODM-Ltd becomes aware that any virus has entered any of the Services or ODM, it will:

(a) notify the Registered Member as soon as reasonably practicable; and

(b) take reasonable steps to eliminate or block the virus from the Services or ODM.

8.9 Where Registered Member Data includes personal information ODM-Ltd acknowledges the importance of safeguarding that information in accordance with applicable privacy laws. If Registered Member Data held by ODM-Ltd that is personal information is disclosed in contravention of applicable privacy laws ODM-Ltd will assist the Registered Member to follow applicable privacy laws relating to privacy breaches by, in all commercially reasonable respects:

(a) containing the disclosure;

(b) assessing the nature of the disclosure, for example, the type of information disclosed and the scope of the parties to which it was disclosed;

(c) mitigating the disclosure;

(d) investigating the cause of the disclosure;

(e) if requested by the Registered Member, assisting the Registered Member to notify affected individuals where the Registered Member reasonably determines that notification should occur; and

(f) preventing further disclosures occurring by the same or similar means.

8.10 Ownership: ODM-Ltd acknowledges that the Registered Member Data, in whatever form and on whatever media, remains the property of the Registered Member or its licensors.

9. Termination

This Agreement is effective until terminated. Registered Member may terminate this Agreement at any time by destroying any and all Contents, related documentation and all copies thereof. This Agreement will terminate immediately without notice from ODM-Ltd if Registered Member fails to comply with any provision of this Agreement.

I don't think the is any practical value in asking for registered member to destroy anything they have downloaded from public domain. I think that we only need to say that for them to terminate they may do so by requesting that they no longer be permitted to access the website. That is how we would terminate.

10. Force Majeure

ODM-Ltd will not be liable for any delay or failure to perform any obligation under this Agreement where the delay or failure results from any cause beyond its reasonable control, including, without limitation, acts of God, labor disputes or other industrial disturbances, systemic electrical, telecommunications, or other utility failures, earthquake, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, or war.

11. Government and Commercial End Users

This Agreement is personal to the Registered Member and no authorization for any use of the content is given to entities which employ or contract to the Registered Member except as expressly provided by ODM-Ltd in a separate license.

12. Disclaimer of Warranty on Content

Registered Member expressly acknowledges and agrees that use of the Content is at Registered Member's sole risk. The Content and related documentation are provided "as is" and without warranty of any kind. ODM-Ltd expressly disclaims all warranties, guarantees, or conditions, express and implied, including, but not limited to, any implied warranties, guarantees or conditions of merchantability and fitness for a particular purpose.

ODM-Ltd does not warrant that the functions contained in the Content will meet Registered Member's requirements, or that the operation of the Content will be uninterrupted or error-free, or that defects in the Content will be corrected. Registered Member assumes the entire risk as to the results and performance of the Content. Furthermore, ODM-Ltd does not warrant, guarantee or make any representations regarding the use or the results of the use of the Content or related documentation in terms of their correctness, accuracy, reliability, or currency. No oral or written information or advice given by ODM-Ltd or its authorized representative shall create a warranty, guarantee or condition or in any way increase the scope of this warranty. Should the Content prove defective, Registered Member (and not ODM-Ltd or its authorized representative) assumes the entire cost of all necessary servicing, repair or correction. Some jurisdictions do not allow the exclusion of implied warranties,

guarantees or conditions, so the above exclusion may not apply to Registered Member. Nothing contained in this Agreement shall be construed as a warranty, condition, guarantee or representation that any manufacture, sale, lease, use or other disposition of Content hereunder will be free from infringement of patents, utility models and/or design patents, trademarks, copyrights, or any other form of intellectual property right, other than under those which licenses have been granted.

13.   Limitation of Liability

Under no circumstances, whether in contract, tort (including negligence), breach of statutory duty or otherwise, shall ODM-Ltd, or its directors, officers, employees, agents, related companies or affiliates, be liable to Registered Member for any:

(a) incidental, indirect, special or consequential loss or damages; or
(b) loss of business, profits, business interruption, business information, and the like,

arising out of the Services, the Website, ODM or the use, misuse or inability to use the Content or related documentation, even if ODM-Ltd or its authorized representative has been advised of the possibility of such loss or damages. Some jurisdictions do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to Registered Member.

The maximum aggregate liability of ODM-Ltd under or in connection with this Agreement or relating to ODM, the Content, the Website or the Services, whether in contract, tort (including negligence), breach of statutory duty or otherwise, must not exceed NZD 1000.

14.   Indemnification

For new Content, Registered Member warrants that it has not included elements which infringe intellectual property rights owned by a third party, and Registered Member agrees that it will at its own expense indemnify, defend and hold harmless ODM-Ltd, and its directors, officers, employees, agents, related companies, affiliates and licensees against any claim, suit, action, or other proceeding based on a claim that the new Content, as delivered to ODM-Ltd (including through the Website) infringes in any manner any intellectual property right of a third party or contains any material that violates any third party's right of publicity or personality, or has otherwise resulted in any tort, injury, damage or harm to any person.

15.   Accepting Warranty or Additional Liability

While redistributing the Content, Registered Member may choose to offer, and charge a fee for, acceptance of support, warranty, indemnity, or other liability obligations and/or rights consistent with this Agreement. However, in accepting such obligations, Registered Member may act only on its own behalf and on its sole responsibility.

16. Controlling Law and Severability

This Agreement shall be governed by and construed in accordance with the laws of New Zealand.

If for any reason a court of competent jurisdiction finds any provision of this Agreement or portion thereof, to be unenforceable, that provision of the Agreement shall be enforced to the maximum extent permissible so as to affect the intent of the parties, and the remainder of this Agreement shall continue in full force and effect.

17. Complete Agreement

This Agreement and the Privacy Policy constitutes the entire agreement between the parties with respect to the use of the Content and the related documentation, and supersedes all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter. Except as set out page 5 of this Agreement no amendment to or modification of this Agreement will be binding unless in writing and signed by a duly authorized representative of ODM-Ltd.

If you wish to contact ODM-Ltd for any reason, including to report suspected information security incidents please email support@opendatamodel.com