



## **MASTER SUBSCRIPTION AGREEMENT**

THIS MASTER SUBSCRIPTION AGREEMENT GOVERNS CUSTOMER'S ACQUISITION AND USE OF OS33 SERVICES.

CAPITALIZED TERMS HAVE THE DEFINITIONS SET FORTH HEREIN.

IF CUSTOMER REGISTERS FOR A FREE TRIAL OF OS33 SERVICES OR FOR FREE SERVICES, THE APPLICABLE PROVISIONS OF THIS AGREEMENT WILL ALSO GOVERN THAT FREE TRIAL OR THOSE FREE SERVICES.

BY ACCEPTING THIS AGREEMENT BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT CUSTOMER AGREES TO THE TERMS OF THIS AGREEMENT. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM "CUSTOMER" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT DOES NOT HAVE SUCH AUTHORITY, OR DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, SUCH INDIVIDUAL MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

OS33's direct competitors are prohibited from accessing the Services, except with OS33's prior written consent.

The Services may not be accessed for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

This Agreement was last updated July 7, 2020. It is effective between Customer and OS33 as of the date of Customer's accepting this Agreement as evidenced by the date your Order Form(s) was signed

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## 1. DEFINITIONS.

**1.1 “Access Credentials”** means login information, passwords, security protocols, and policies for the OS33 Products and Platform.

**1.2 “Affiliate”** means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

**1.3 “Agreement”** means this Master Subscription Agreement.

**1.4 “Authorized Partners”** means a third party introduced by OS33 to perform a portion of the Services as either a subcontractor to OS33 or via a direct relationship with Customer. All such Partners will have been assessed, trained, certified as capable of performing such Services.

**1.5 “Base Monthly Fee”** means the minimum monthly fees due and payable in connection with any Order Form during the term. It shall be adjusted in each subsequent Renewal Term to the average of the Monthly Fees for Services in the immediately preceding three (3) month period. In no event shall the Base Monthly Fee in any renewal term be less than the Base Monthly Fee during the Initial Term.

**1.6 “Beta Services”** means OS33 services or functionality that may be made available to Customer to try at its option at no additional charge which is clearly designated as beta, pilot, limited release, developer preview, non-production, evaluation, or by a similar description.

**1.7 “Confidential Information”** means all written or oral information, disclosed by one party (the “**Disclosing Party**”) to the other (the “**Recipient**”), related to the business, products, services or operations of the Disclosing Party that has been identified as confidential or that by the nature of the information or the circumstances surrounding disclosure ought reasonably to be treated as confidential, including, without limitation: (i) trade secrets, inventions, ideas, processes, computer source and object code, formulae, data, programs, other works of authorship, know-how, improvements, discoveries, developments, designs and techniques; (ii) information regarding products, plans for research and development, marketing and business plans, budgets, financial statements, contracts, prices, employees, suppliers, and agents; and (iii) information regarding the skills and compensation of the disclosing party’s employees, contractors, and other agents.

**1.8 “Customer”** means in the case of an individual accepting this Agreement on his or her own behalf, such individual, or in the case of an individual accepting this Agreement on behalf of a company or other legal entity, the company or other legal entity for which such individual is accepting this Agreement, and Affiliates of that company or entity (for so long as they remain Affiliates) which have entered into Order Forms.

**1.9 “Customer Content”** means the data or content uploaded into the Services or by or on behalf of Customer or a User.

**1.10 “Documentation”** means text and/or graphical documentation, whether in electronic or printed format, provided by OS33 to Customer that are identified as, or intended to be, user manuals or videos and describe the features, functions and operation of the OS33 Products.

**1.11 “Go Live Date”** means the date on which Customer can first access and use of the OS33 Platform.

**1.12 “Implementation Fees”** will mean the one-time charges, if any, associated with the provisioning, configuration and related services associated with any Services.

**1.13 “Malicious Code”** means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

**1.14 “OS33”** means OS33 Services Corporation, a New York corporation, with its primary office at 10 Woodbridge Center Drive, Suite 210, Woodbridge NJ 07095.

**1.15 “OS33 Products”** means Workplace software and/or solutions as indicated on any Order Form.

**1.16 “Personal Information”** means any Customer Content that identifies any specific individual and accordingly is protected under applicable privacy laws, rules and regulations.

**1.17 “Platform”** means OS33’s software-as-a-service application that enables Customer to administer the applicable OS33 Product (as indicated on the applicable Order Form(s)), manage Users and monitor and review usage of the applicable OS33 Product.

**1.18 “Professional Services”** means professional services provided by OS33 or its Authorized Partners to Customer that are (together with associated fees) set out in a Order Form, as well as any implementation services.

**1.19 “Services”** means the OS33 Products, the Professional Services, and the Platform, as set forth in any Order Form(s).

**1.20 “Order Form”** means an ordering document or online order specifying the Services to be provided hereunder that is entered into between Customer and OS33, including any addenda and supplements thereto. By entering into an Order Form hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto.

**1.21 “User”** means each of Customer’s employees, agents, and independent contractors who are provided Access Credentials to an OS33 Product by Customer or OS33.

## **2. OBTAINING SERVICES**

**2.1 Ordering.** The Services to be provided by OS33 under this Agreement will be described and set forth in the applicable Order Form (each, a “**Subscription**” and together as multiple Order Forms, the “**Purchased Subscriptions**”).

**2.2 Provision of Professional Services.** Subject to the terms and conditions of this Agreement, OS33 or its Authorized Partners will provide the Professional Services to Customer in a workmanlike and professional manner in accordance with industry standards.

## **3. ACCESS, RIGHTS, RESTRICTIONS AND SECURITY**

**3.1 Access to Platform.** Subject to Customer’s compliance with the terms and conditions contained in this Agreement, OS33 grants to Customer a non-exclusive, non-transferable, non-sublicensable, revocable right to access and use the Platform. Customer’s access and use of the Platform is limited to Customer’s internal use only.

**3.2 Access to OS33 Products.** Subject to Customer’s compliance with the terms and conditions contained in this Agreement, OS33 grants to Customer a non-exclusive, non-transferable, non-sublicensable, revocable right to use the OS33 Products listed in the executed Order Form(s) associated with this Agreement, as made available through the Platform.

**3.3 Access Credentials.** Customer will safeguard, and ensure that all Users safeguard, the Access Credentials. Customer will be responsible for all acts and omissions of Users. Customer will notify OS33 immediately if it learns of any unauthorized use of any Access Credentials or any other known or suspected breach of security.

**3.4 Service Level.** OS33 will use commercially reasonable efforts to make the Platform and OS33 Products available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which OS33 shall give advance electronic notice), and (ii) any unavailability caused by circumstances beyond OS33's reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving OS33 employees), Internet service provider failure or delay, non-OS33 application, or denial of service attack.

**3.5 Beta Services.** From time to time, OS33 may make Beta Services available to Customer at no charge. Customer may choose to try such Beta Services or not in its sole discretion.

**3.6 Customer Restrictions.** Customer will not, and will not permit any User or other party to: (i) adapt, alter, modify, improve, translate or create derivative works of the Platform or OS33 Products, (ii) reverse engineer, decompile, disassemble or otherwise attempt to reconstruct or obtain the source code to all or any portion of the Platform or OS33 Products; and (iii) except as may be specifically provided in a Order Form or this Agreement, or otherwise approved by OS33 in writing, provide any third party access to the Platform or OS33 Products or use the Platform or OS33 Products on behalf of any third party, including as part of a time-sharing, outsourcing or service bureau environment.

### **3.7 Proprietary Rights and Confidential Information**

#### **(a) Confidential Information**

**(i) Use and Disclosure.** During the Term, each party will have access to the other party's Confidential Information. Except as otherwise expressly permitted, and without limiting each party's obligations, under this Agreement, each Disclosing Party agrees as follows: (A) it will not disclose the Confidential Information of the Disclosing Party to anyone except its employees, contractors, third party services and advisors who have a need to know and who have been advised of and have agreed to treat such information in accordance with the terms of this Agreement (each a "**Representative**") and (B) it will not use or reproduce the Confidential Information disclosed by the Disclosing Party for any purpose other than exercising its rights and / or performing its obligations as described herein. Each Recipient will be liable for the acts and omissions of its Representatives with respect to the Disclosing Party's Confidential Information.

**(ii) Exceptions.** The provisions of Section 3.7(a) will not apply to Confidential Information that: (A) is or becomes publicly available or enters the public domain through no fault of the Recipient; (B) is in the Recipient's possession without knowledge of any confidentiality obligations, or (C) is independently developed by the recipient without use of or reference to the Disclosing Party's Confidential Information. Notwithstanding the foregoing, each party may disclose Confidential Information to the limited extent required: (1) by securities laws, (2) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the party making the disclosure pursuant to the order will first have given written notice to the other party and made a reasonable effort to obtain a protective order; or (3) to establish a party's rights under this Agreement, including to make such court filings as it may be required to do.

(b) Customer Content

(i) Customer Content. As between the parties, Customer is solely responsible for any and all obligations with respect to the accuracy, quality and legality of Customer Content. Customer will obtain all third-party licenses, consents and permissions needed for OS33 to use the Customer Content to provide the Services and as otherwise permitted by this Agreement.

(ii) License in Customer Content. Customer grants to OS33 a non-exclusive license to use the Customer Content as necessary for purposes of providing the Services and as otherwise permitted by this Agreement. Except for the limited licenses granted to OS33 in any Customer Content, as between Customer and OS33, Customer reserves all right, title and interest in the Customer Content.

(c) Usage Data. Customer agrees that OS33 may utilize data capture, syndication, and analysis tools, and other similar tools, to extract, compile, synthesize, and analyze any non-personally identifiable data resulting from Customer's and Users' use of the Services ("**Usage Data**"). Usage Data will be owned by OS33.

(d) Use of Services. Customer will comply with all applicable laws in its use of the Services, and provision of Customer Content.

(e) Reservation of Rights. Except for the limited rights provided to Customer in this Agreement, OS33 reserves all right, title and interest in the Services (and any intellectual property rights embodied therein). Unless otherwise expressly set forth in any Order Form, and except for any Customer Content, all work product or services provided or developed pursuant to this Agreement or any Order Form (including any modifications and improvements to any Services pursuant to subsection (f) below, and all intellectual property and other proprietary rights derived therefrom) will be the sole and exclusive property of OS33.

(f) Continuous Development. Customer acknowledges that OS33 may continually develop, deliver and provide to Customer on-going innovation to the Services, in the form of new features, functionality, and efficiencies. Accordingly, OS33 reserves the right to modify the Services, from time to time. Some modifications will be provided to Customer at no additional charge. In the event OS33 adds additional functionality to a particular OS33 Product or the Platform, OS33 may condition the implementation of such modifications on Customer's payment of additional fees; provided that Customer may continue to use the version of the OS33 Product and Platform that OS33 makes generally available (without such features) without paying additional fees through the end of the then current term.

(g) Professional Services; Training and Support. During the Term, OS33 will provide Customer with updates and upgrades to the OS33 Products and Platform that OS33 makes generally available to all customers. Customer may request that OS33 provide certain additional Professional Services related to Customer's use of the Services, including, by way of example, customization or additional training of Customer personnel ("**Additional Services**"). Any Additional Services will be described and priced in a separate Order Form.

(h) Feedback. OS33 in its sole discretion, may utilize, all comments and suggestions, whether written or oral, furnished by Customer to OS33, including such comments and suggestions of Users, in connection with its access to and use of the Services (all comments and suggestions provided by Customer hereunder constitute, collectively, the "**Feedback**"). Customer hereby grants OS33, on behalf of itself and its Users, a worldwide, non-exclusive, irrevocable, perpetual, royalty-free right and license to incorporate the Feedback into OS33 products and services.

**4. SECURITY.** OS33 will maintain a comprehensive information security program consistent with industry standards that contains appropriate administrative, technical and physical safeguards reasonably designed to protect Personal Information from unauthorized disclosure. In the event that OS33 has reason to believe that there has been any unauthorized access to, or loss of, Personal Information from its systems or premises, then it will promptly notify Customer according to OS33's policies and protocols aligned with the data type and nature of the event.

## **5. CONSIDERATION**

**5.1 Pricing.** The schedule of fees, rates, and charges for the Purchased Subscriptions are as set forth in each applicable Order Form ("**Monthly Fees**"), and may be amended from time to time. Except as expressly provided in the applicable Order Form, per unit renewal pricing may increase by no more than 10% during any renewal period.

**5.2 Invoicing.** OS33 will invoice Customer in advance for the Monthly Fees for the current month on or before the 10th day of the current month. Payment for invoices will be due on the last calendar date of the current month. Monthly Fees in a given month will not be less than the Base Monthly Fee for the Purchased Subscriptions. Where applicable, fees shall be calculated based upon the number of Users, resources used by Customer, and other Services provided during the applicable calendar month. Monthly Fees will commence the earlier of Go Live Date or sixty (60) days from the Effective Date. If OS33 causes a delay beyond the sixty (60) days, then Monthly Fees will begin at sixty (60) days plus the OS33-caused delay period. Customer agrees to be invoiced for Implementation Fees in advance of the performance of such Services.

**5.3 Payment.** Customer is responsible for payment to OS33 or to any entity designated by OS33 for all Monthly Fees associated with the Purchased Subscriptions, along with any additional Services furnished to Customer hereunder. All payments will be non-refundable and will not be subject to set-off or deduction.

**5.4 Taxes.** The Fees exclude, and Customer will be responsible for, all sales, use, excise, withholding and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental entity in connection with the Services.

**5.5 Late Payments.** In addition to any rights and remedies available to OS33 hereunder, at law, or in equity, if Customer fails to pay any fees due hereunder within thirty (30) days from the date due, OS33 may impose a late charge equal to the lesser of one and one half percent (1.5%) per month interest or the maximum allowable rate under applicable law. In the event OS33 in its discretion elects not to charge Customer a late charge or interest for a particular invoice, such election will not waive OS33's rights to charge a late charge or interest for any other invoice, including future invoices.

**5.6 Expenses.** Customer will reimburse OS33 for any pre-approved travel and out-of-pocket expenses incurred by OS33 in connection with the provision of Services, provided that Customer has approved such expenses in writing.

## **6. WARRANTIES; DISCLAIMERS; LIMITATIONS ON LIABILITY**

**6.1 Mutual.** Each party represents and warrants that: (a) it is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization; (b) that the execution and performance of the Agreement will not conflict with or violate any provision of any law having applicability to such party; (c) that the Agreement, when executed and delivered, will constitute a valid and binding obligation of such party and will be enforceable against such party in

accordance with its terms; and (d) each person executing the Agreement represents and warrants that he or she has the authority to bind the party on whose behalf he or she has signed.

**6.2 By Customer.** Customer represents and warrants that Customer has all necessary rights and authority to grant the rights contained in this Agreement.

**6.3 Compliance with Laws.** Customer will be solely responsible for its compliance with all applicable laws, rules and regulations, including, but not limited to, with respect to its use of the Services.

**6.4 Warranty Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED IN THE AGREEMENT, THE SERVICES ARE PROVIDED “AS IS” AND OS33 MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, QUIET ENJOYMENT OR FROM A COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE IN TRADE. OS33 DOES NOT WARRANT, AND SPECIFICALLY DISCLAIMS, THAT THE SERVICES WILL BE ACCURATE, WITHOUT INTERRUPTION, OR ERROR-FREE. OS33 WILL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES OR OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR FOR ISSUES RELATED TO THIRD-PARTY HOSTING PROVIDERS WITH WHOM CUSTOMER SEPARATELY CONTRACTS. CUSTOMER MAY HAVE OTHER STATUTORY RIGHTS, BUT THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, WILL BE LIMITED TO THE SHORTEST PERIOD PERMITTED BY LAW.

**6.5 Disclaimer of Indirect Damages.** IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, INTERRUPTION OF SERVICE, OR LOSS OF BUSINESS OR BUSINESS OPPORTUNITY, EVEN IF SUCH DAMAGES ARE FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. IN NO EVENT WILL OS33 BE LIABLE FOR THE PROCUREMENT OF SUBSTITUTE SERVICES.

**6.6 Limitations on Liability.** NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, OS33’S MAXIMUM LIABILITY TO CUSTOMER AND ITS AFFILIATES UNDER THIS AGREEMENT IS LIMITED TO THE FEES PAID BY CUSTOMER TO OS33 IN THE SIX (6) CALENDAR MONTH PERIOD IMMEDIATELY PRECEDING THE DATE FOR WHICH ANY CLAIM OF LIABILITY IS MADE. THE PARTIES ACKNOWLEDGE THAT OS33 HAS SET ITS PRICES AND ENTERED INTO THIS AGREEMENT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND THE DISCLAIMERS OF WARRANTIES AND DAMAGES SET FORTH HEREIN, AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. THE PARTIES AGREE THAT THE LIMITATION AND EXCLUSIONS OF LIABILITY AND DISCLAIMERS SPECIFIED IN THIS AGREEMENT WILL SURVIVE AND APPLY EVEN IF FOUND TO HAVE FAILED THEIR ESSENTIAL PURPOSE.

**6.7 Exceptions.** IN ANY JURISDICTIONS THAT DOES NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN LIABILITY, THE LIABILITY OF OS33 WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW. THE PROVISIONS OF THIS SECTION 6 WILL APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS

AGREEMENT HAVE BEEN BREACHED, ANY LIMITED REMEDY HEREIN IS HELD TO FAIL OF ITS ESSENTIAL PURPOSE OR THE FORM OF THE CLAIM OR CAUSE OF ACTION, WHETHER IN CONTRACT, WARRANTY, STATUTE, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE).

## 7. INDEMNIFICATION

**7.1 OS33 Indemnity.** OS33 will indemnify, defend and hold Customer, its directors, officers, employees and representatives, harmless from and against any and all losses, damages, liability, costs and expenses awarded by a court, as well as all reasonable and related attorneys' fees and court costs, (collectively "**Losses**") arising out of any third party claim alleging that the Services infringe any U.S. patent, copyright, trademark or trade secret.

**7.2 Exclusions.** Section 7.1 will not apply if the alleged claim arises, in whole or in part, from: (a) a (i.) use of the Services in a manner outside the scope of any right granted or in breach of this Agreement or (ii.) modification of the Services by any Customer or any User, (b) a combination, operation or use of the Services with other software, hardware or technology not provided by OS33 if the claim would not have arisen but for the combination, operation or use, or (c) the Customer Content (any of the foregoing circumstances under clauses (a), (b) or (c) are "**Customer Indemnity Responsibility**").

**7.3 Customer Indemnity.** Customer will indemnify, defend and hold harmless OS33, its directors, officers, employees and representatives, from and against any and all Losses arising out of any third party claim (a) alleging a Customer breach of any Customer representation or warranty in Section 6 and (b) arising out of any Customer Indemnity Responsibility.

**7.4 Indemnification Process.** The foregoing indemnification obligations are conditioned on the indemnified party: (a) notifying the indemnifying party promptly in writing of such action, (b) reasonably cooperating and assisting in such defense and (c) giving sole control of the defense and any related settlement negotiations to the indemnifying party with the understanding that the indemnifying party may not settle any claim in a manner that admits guilt or otherwise prejudices the indemnified party, without consent.

**7.5 Infringement.** If any Service is, or in OS33's opinion, is likely to become the subject of any infringement-related claim, then OS33 will, at its expense and in its discretion: (a) procure for Customer the right to continue using the Service; (b) replace or modify the infringing technology or material so that the Service becomes non-infringing and remains materially functionally equivalent; or (c) terminate the Order Form(s) pursuant to which the Service is provided and give Customer a refund for any pre-paid but unused fees.

**7.6 THE PROVISIONS OF THIS SECTION 7 STATE OS33'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDIES FOR ANY CLAIM THAT THE SERVICES INFRINGE A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHT.**

## 8. TERM AND TERMINATION

**8.1 Term of Agreement.** This Agreement commences on the Effective Date of Customer's first Order Form and continues until all Subscriptions hereunder have expired or have been terminated.

**8.2 Term of Purchased Subscriptions.** The term of each Subscription shall be as specified in the applicable Order Form. Except as otherwise specified in an Order Form, subscriptions will



automatically renew for additional one-year periods, unless either party gives the other written notice of at least ninety (90) days before the end of the relevant subscription term.

**8.3 Termination.** This agreement may be terminated:

(a) for non-renewal by either party pursuant to section 8.2 with termination becoming effective as of the last day of the calendar month of the last current Order Form or Subscription; and

(b) upon written notice to the other party following the occurrence of a Relevant Event not cured within the time periods described under Section 8.4, as applicable, with termination becoming effective as of the date specified in such notice, but in no event later than the last day of the calendar month in which a notice of termination is received by the other party.

**8.4 Relevant Events.** For the purpose of Section 8.3, a “Relevant Event” is committed by a party if:

(a) such party fails to perform its obligations under this agreement and such failure continues for a period of thirty (30) days (or, in the case of non-payment by Customer, 15 days) after delivery of written notice demanding cure; provided, however that if such Party has commenced performance of such obligation (excluding non-payment) and is acting in good faith to cure same, but has not cured the breach by the 30th day, such period will be extended for a reasonable period of time so as to permit such party to complete performance of its obligations; or

(b) any of the following events occur: to a party: (i) a distress, execution, sequestration or other process is levied or enforced upon or sued out against a material part of its property which is not discharged within 30 days; (ii) it ceases wholly or substantially to carry on its business, otherwise than for the purpose of a reconstruction, without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed); (iii) the appointment of a liquidator, receiver, administrator, examiner, trustee or similar officer of such party over all or substantially all of its assets; or (iv) an application or petition for bankruptcy, corporate re-organization, composition, administration, examination, arrangement is filed, and is not discharged within 30 days, or a party applies for or consents to the appointment of a receiver, administrator, examiner or similar officer of it or of all or a material part of its assets, rights or revenues.

**8.5 Suspension of Service(s).** At any time during the Term, OS33 may, immediately upon notice to Customer, suspend access to any Service for the following reasons: (a) a threat to the technical security or technical integrity of the Services; (b) any amount due under this Agreement is not received by OS33 within 15 days after it was due, or (c) breach or violation by Customer of any statutes, laws, or regulations.

**8.6 Effect of Termination.**

(a) Upon submission of written notice of non-renewal described in Section 8.3, all amounts due and outstanding and all other amounts that are due and payable by Customer through the end of the calendar month of the then-current term (including any renewal terms exercised or automatically occurring) will be accelerated and become immediately due and payable. In determining charges due and payable for the remainder of the term from and after a termination of this Agreement, the average Monthly Fees payable by Customer in the immediately preceding three (3) month period preceding the month in which termination occurred shall be multiplied respectively by the number of months remaining in any then-current Subscriptions (including any renewal term exercised or automatically). Customer will pay all such charges within five (5) days after receipt of invoice thereof from OS33. Termination of this Agreement will not relieve Customer of Customer’s obligation to pay any fees or

other charges incurred through the date of termination or otherwise accruing through the end of the then-current term (and any exercised or automatic renewal term).

**(b) Extension Period.** Customer may extend the applicable date of termination specified in Section 8.3 for up to two additional calendar months after the applicable date of termination, provided, however, that Customer notifies OS33 of Customer's election within ten (10) days after notice of termination, specifying the date Customer desires to extend the term of this Agreement (the "Extension Period"). The Monthly Fee during each month of the Extension Period will be equal to one hundred twenty-five (125%) percent of the average Monthly Fees payable in the three (3) month period immediately preceding the month in which notice of termination occurred (the "Extension Period Monthly Fees"). As a condition to Customer's right to extend the term of this Agreement, Customer's notice of extension shall be accompanied by payment of any amounts due and outstanding through the end of the term, together with the Extension Period monthly fees.

**(c)** Upon termination or expiration of this Agreement, all licensed and access rights granted will immediately cease to exist.

**(d)** Sections 1, 3.6, 3.7(a), 3.7(c), 3.7(e), 6, 7, 8.6, and 9 will survive any expiration or termination of this Agreement.

**8.7 Remedies.** Termination of this Agreement by either party will not prejudice OS33's right to recover or prove damages for amounts incurred or accrued and unpaid prior to the date of termination. No remedy referred to in this Agreement is intended to be exclusive, and the exercise of any one or more of such remedies will not preclude the simultaneous or later exercise by OS33 of any or all of such other remedies available to OS33 at law or in equity. OS33's remedies will be available to OS33's successors and assigns.

**8.8 Return of Customer Content.** Unless otherwise agreed to in any Order Form, upon termination of this Agreement, OS33 will, upon Customer's request during the 30-day period following termination, return to Customer the Customer Content in mutually agreed upon format.

## **9. GENERAL**

**9.1 Assignment.** This Agreement cannot be assigned by either Customer or OS33 without the prior written consent of the other; provided, however, that either party may assign this Agreement without consent to any person or entity that is an affiliate, or acquires by sale, merger or otherwise, all or substantially all of its assets, stock or business. Any attempted assignment or delegation in violation of this Section 9.1 will be null, void and of no effect.

**9.2 Customer.** During the Term, OS33 may use Customer's name and logo to identify Customer as an OS33 customer.

**9.3 Notices.** All notices, consents, and approvals under this Agreement must be delivered via email or in writing by courier, or by certified or registered mail, (postage prepaid and return receipt requested) to the other party at the address set forth in this Agreement and will be effective upon receipt (provided, that notice via email is only effective upon the recipient's non-automatic reply email confirming receipt). Either party may change its address by giving notice of the new address to the other party.

**9.4 Governing Law; Disputes.** This Agreement will be governed by the laws of the State of New York, without reference to its conflicts of law principles. Any dispute, controversy or claim arising

out of or relating to this Agreement, will be made exclusively in the state or federal courts located in New York, New York and both parties submit to the jurisdiction and venue of such courts.

**9.5 Remedies.** Customer acknowledges that any actual or threatened breach of Section 3 will constitute immediate, irreparable harm to OS33 for which monetary damages would be an inadequate remedy, and that injunctive relief is an appropriate remedy for such breach. If any legal action is brought to enforce this Agreement, the prevailing party will be entitled to receive its reasonable attorneys' fees, court costs, and other collection expenses, in addition to any other relief it may receive.

**9.6 Waivers.** All waivers must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

**9.7 Export.** Customer will not itself, or permit any third party to, export, re-export or release, directly or indirectly, the OS33 Products (as applicable) to any country, jurisdiction or person to which such export, re-export or release (i) is prohibited by applicable law or regulations; or (ii) without first completing all required undertakings (including obtaining any necessary export license or other governmental approval).

**9.8 Severability.** If any provision of this Agreement is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.

**9.9 No Third-Party Beneficiaries.** The parties acknowledge that the covenants set forth in this Agreement are intended solely for the benefit of the parties, their successors and permitted assigns. Nothing herein, whether express or implied, will confer upon any person or entity (including any User) other than the parties, their successors and permitted assigns, any legal or equitable right whatsoever to enforce any provision of this Agreement.

**9.10 Construction.** The parties negotiated this Agreement with the opportunity to receive the aid of counsel and, accordingly, intend this Agreement to be construed fairly, according to its terms, in plain English, without constructive presumptions against the drafting party. The headings of Sections of this Agreement are for convenience and are not to be used in interpreting this Agreement. As used in this Agreement, the word "including" means "including but not limited to."

**9.11 Force Majeure.** Any delay in the performance of any duties or obligations of either party (except the payment of money owed) will not be considered a breach of this Agreement if such delay is caused by a labor dispute, shortage of materials, fire, earthquake, flood, war, act of terror, or any other event beyond the control of such party ("**Force Majeure Event**"). The affected party will use reasonable efforts, under the circumstances, to notify the other party of the circumstances causing the delay and to resume performance as soon as possible.