



# Organizational Performance Systems, Inc.

## Master Subscription Agreement

*Last updated on February 26, 2024*

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THIS AGREEMENT GOVERNS YOUR ACQUISITION AND USE OF OUR SERVICES.

IT IS EFFECTIVE BETWEEN YOU AND US AS OF THE DATE OF YOU ACCEPTING THIS AGREEMENT.

IF YOU REGISTER FOR A FREE TRIAL FOR OUR SERVICES, THIS AGREEMENT WILL ALSO GOVERN THAT FREE TRIAL.

BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

You may not access the Services if You are Our direct competitor, except with Our prior written consent. In addition, You may not access the Services for purposes of monitoring their availability, performance, or functionality, or for any other benchmarking or competitive purposes.

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## 1.0 DEFINITIONS

“**OPS**”, “**We**”, “**Us**” or “**Our**” means Organizational Performance Systems, Inc., a Delaware Corporation, described in section 15.0 (Who You Are Contracting With, Notices, Governing Law and Jurisdiction).

“**You**” or “**Your**” means the company or other legal entity for which you are accepting this Agreement, and Affiliates of that company or entity. In the case of referral programs, You may also mean “Referrer” of prospective new clients.

“**User**” means an individual who is authorized by You to use a Service, for whom You have ordered the Service, and to whom You (or We at Your request) have supplied a user identification and password. Users may include, for example, Your employees, consultants, contractors and agents, and third parties with which You transact business.

“**ACH**” means Automated Clearing House.

“**Advisory and Technical Support Services**” means the professional services relating to the deployment, implementation, and use of the Applications or Services.

“**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 fifty percent (50%) of the voting interests of the subject entity.

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

“**Beta Services**” means Our services that are not generally available to customers.

“**Content**” means information obtained by Us from Our content licensors or publicly available sources and provided to You pursuant to an Order Form, as more fully described in the Documentation.

“**Documentation**” means Our online user guides, documentation, and help and training materials, as updated from time to time.

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

“**Marketplace**” means an online directory, catalog, or marketplace of applications that interoperate with the Services, including, for example, EnVision located at <https://envision.ops1.com/> and any successor websites.

“**Non-OPS Applications**” means a web-based or offline software application that is provided by You or a third party and interoperates with a Service, including, for example, an application that is developed by or for You, or is identified as OPS R&D Labs or a similar designation.

“**Order Form**” means an ordering document specifying the Services to be provided hereunder that is entered into between You and Us or any of Our Affiliates, 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.

“**Price List**” means the agreed to pricing for OPS products and services.

“**Purchased Services**” means the applications and professional and technical services provided by Us via <http://ops1.com> and/or other designated websites, either together or separately, that You or Your Affiliates purchase under an Order Form or invoice, as distinguished from those provided pursuant to a free trial.

“**Referrer**” means a current customer that introduces a prospective new customer to OPS.

“**Referee**” means a prospective new customer introduced to OPS by a Referrer.

“**Referral**” means the introduction of a Referee by a Referrer. For the purposes of discounts and awards, a “Qualified Referral” is a Referee that (i) is a new user of a Purchased Service, (ii) agrees to a subscription and consents to and complies with this Agreement, and (iii) pay the subscription price, if any, in full.

"**Service Level Agreement**" means the online documentation that describes the performance specifications of the OPS Applications.

"**Your Data**" means electronic data and information submitted by or for You to the Purchased Services or collected and processed by or for You using the Purchased Services, excluding Content and Non-OPS Applications.

## **2.0 CHANGES TO THE TERMS AND CONDITIONS**

**2.1. Changes.** Company may at its discretion modify, update, add to, discontinue, remove, or otherwise change these Terms at any time. Each such modification will take immediate effect upon notification to you. Company may provide you with notices, including those regarding changes to these Terms, by email, regular mail, text message, in-app messaging, or other reasonable means now known or hereinafter developed.

2.2. Your continued use of the Services following any such notifications constitutes your acceptance of such modifications and your agreement to be bound by these Terms. If you do not agree to any modification of these Terms, your sole remedy is to discontinue your use of the Services. The most current version of these Terms will be available on our website and supersedes previous versions.

## **3.0 FREE TRIAL**

If You register for a free trial, We will make one or more Services available to You on a trial basis free of charge until the earlier of (a) Your exceeding a predetermined user limit or (b) the end of the free trial period for which you registered to use the applicable Service(s). Unless otherwise terminated by either party, the end of the free trial period coincides with the start date of a Purchased Service subscription ordered by You for such Service(s). Additional trial terms and conditions may apply. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding.

**ANY DATA YOU ENTER INTO THE SERVICES, AND ANY CUSTOMIZATIONS MADE TO THE SERVICES BY OR FOR YOU, DURING YOUR FREE TRIAL WILL BE PERMANENTLY LOST UNLESS YOU PURCHASE A SUBSCRIPTION TO THE SAME SERVICES AS THOSE COVERED BY THE TRIAL, PURCHASE UPGRADED SERVICES, OR EXPORT SUCH DATA, BEFORE THE END OF THE TRIAL PERIOD. YOU CANNOT TRANSFER DATA ENTERED OR CUSTOMIZATIONS MADE DURING THE FREE TRIAL TO A SERVICE THAT WOULD BE A DOWNGRADE FROM THAT COVERED BY THE TRIAL (E.G., FROM ENTERPRISE EDITION TO PROFESSIONAL EDITION); THEREFORE, IF YOU PURCHASE A SERVICE THAT WOULD BE A DOWNGRADE FROM THAT COVERED BY THE TRIAL, YOU MUST EXPORT YOUR DATA BEFORE THE END OF THE TRIAL PERIOD OR YOUR DATA WILL BE PERMANENTLY LOST.**

NOTWITHSTANDING SECTION 11.0 (WARRANTIES AND DISCLAIMERS), DURING THE FREE TRIAL THE SERVICES ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY.

Please review the User Guide during the trial period so that You become familiar with the features and functions of the Services before You make Your purchase.

## **4.0 PURCHASED SERVICES**

**4.1. Provision of Purchased Services.** We shall make the OPS Products and Services (together "Purchased Services") available to You pursuant to this Agreement and the relevant Order Forms. OPS software applications ("Applications") will be provided during a subscription term. You agree that Your Application purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Us regarding future functionality or features.

**4.2. User Subscriptions.** Unless otherwise specified in the applicable Order Form, (i) Applications are purchased as subscriptions which may be by-user, by-bed, by-facility, or by client organization depending on the specific application or module, and, in the case of by-user and by-facility subscriptions may be accessed by no more than the specified number of Users, (ii) additional User subscriptions may be added during the subscription term at the same pricing as that for the pre-existing subscriptions, prorated for the remainder of the subscription term in effect

at the time the additional User subscriptions are added, and (iii) the added User subscriptions shall terminate on the same date as the pre-existing subscriptions. User subscriptions are for designated Users and cannot be shared or used by more than one User but may be reassigned to new Users replacing former Users who no longer require ongoing use of the Services.

## **5.0 USE OF THE SERVICES**

**5.1. Our Responsibilities.** We shall: (i) provide to You basic technical support for the Purchased Services at no additional charge, and/or upgraded support if purchased separately, (ii) use commercially reasonable efforts to make the Applications available 24 hours a day, 7 days a week, except for: (a) planned downtime (of which We shall give at least 8 hours notice via the Application or other Purchased Services and which We shall schedule to the extent practicable during the weekend hours from 6:00 p.m. Pacific time Friday to 3:00 a.m. Pacific time Monday), or (b) any unavailability caused by circumstances beyond Our reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Our employees), or Internet service provider failures or delays, and (iii) provide the Purchased Services only in accordance with applicable laws and government regulations.

**5.2. Your Responsibilities.** You shall (i) be responsible for Users' compliance with this Agreement, (ii) be solely responsible for the accuracy, quality, integrity, and legality of Your Data and of the means by which You acquired Your Data, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify Us promptly of any such unauthorized access or use, and (iv) use the Services only in accordance with any user guides, instruction, and applicable laws and government regulations. You shall not (a) make the Services available to anyone other than Users, (b) sell, resell, rent or lease the Services, (c) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use the Services to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of the Services or third-party data they contain, or (f) attempt to gain unauthorized access to the Services or their related systems or networks.

**5.3. Assignment of Support Personnel.** Should OPS assign personnel to support the implementation of Purchased Services, We retain the right to re-assign those personnel at our discretion. You retain the right to disapprove of any OPS Professional Services personnel for reasonable cause. OPS and You agree that neither party shall make an offer of employment, to or accept as an employee, any person employed by either party who are associated with work related to the negotiation, performance and administration of this Agreement, directly or otherwise. Both parties agree further that this provision shall survive the termination of this Agreement for a period of two years.

It is OPS's responsibility to bring to the attention of Your Project Manager in writing, any failure of You to provide any of the above requirements, or failure to provide adequate support for OPS to complete the Services in a satisfactory and timely manner.

**5.4. Application Usage Limitations.** Use of OPS Applications may be subject to other limitations.

## **6.0 FEES AND PAYMENT FOR PURCHASED SERVICES**

**6.1. Fees.** You shall pay all fees specified in all Order Forms hereunder. Except as otherwise specified in this Agreement or in an Order Form, (i) fees are quoted and payable in United States dollars (ii) fees are based on services purchased and not actual usage, (iii) payment obligations are non-cancellable and fees paid are non-refundable (except as provided for in section 14.5), and (iv) the number of User subscriptions purchased cannot be decreased during the relevant subscription term stated on the Order Form.

**6.2. Invoicing and Payment.** Payment will be made by you via credit card or Automated Clearing House (ACH). If by ACH, we will provide You with the necessary banking information to complete the transaction. If by credit card, You will provide Us with valid and updated credit card information. You authorize Us to charge such credit card for all Purchased Services listed in the Order Form for the initial subscription term and any renewal subscription term(s) as set forth in section 14.2 (Term of Purchased Subscriptions). Such charges shall be made in advance, either annually or in accordance with any different billing frequency stated in the applicable Order Form. If the Order Form specifies that payment will be by another method acceptable to Us, We will invoice You in advance

and otherwise in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, invoiced charges are due net 30 days from the invoice date. You are responsible for providing complete and accurate billing and contact information to Us and notifying Us of any changes to such information.

**6.3. Overdue Charges.** If any invoiced amount is not received by Us by 60 days from the invoice, then without limiting Our rights or remedies, (a) those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, and/or (b) We may condition future subscription renewals and Order Forms on payment terms shorter than those specified in section 6.2 (Invoicing and Payment).

**6.4. Suspension of Service and Acceleration.** If any amount owing by You under this or any other agreement for Our services is 60 or more days overdue (or 10 or more days overdue in the case of amounts You have authorized Us to charge to Your credit card), We may, without limiting Our other rights and remedies, accelerate Your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Our services to You until such amounts are paid in full.

**6.5. Payment Disputes.** We will not exercise Our rights under section 6.3 (Overdue Charges) or 6.4 (Suspension of Service and Acceleration) above if You are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute.

**6.6. Taxes.** Our fees do not include any taxes, levies, duties, or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, “Taxes”). You are responsible for paying all Taxes associated with Your purchases hereunder. If We have the legal obligation to pay or collect Taxes for which You are responsible under this paragraph, the appropriate amount shall be invoiced to and paid by You, unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, We are solely responsible for taxes assessable against us based on Our income, property, and employees.

**6.7. Future Functionality.** You agree that Your purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Us regarding future functionality or features.

## **7.0 USE OF SERVICES AND CONTENT**

**7.1. Subscriptions.** Unless otherwise provided in the applicable Order Form, (a) Services and Content are purchased as subscriptions, (b) subscriptions may be added during a subscription term at the same pricing as the underlying subscription pricing, prorated for the portion of that subscription term remaining at the time the subscriptions are added, and (c) any added subscriptions will terminate on the same date as the underlying subscriptions.

**7.2. Usage Limits.** Services and Content are subject to usage limits, including, for example, the quantities specified in Order Forms. Unless otherwise specified, (a) a quantity in an Order Form refers to Users, and the Service or Content may not be accessed by more than that number of Users, (b) a User’s password may not be shared with any other individual, and (c) a User identification may be reassigned to a new individual replacing one who no longer requires ongoing use of the Service or Content. If You exceed a contractual usage limit, We may work with You to seek to reduce Your usage so that it conforms to that limit. If, notwithstanding Our efforts, You are unable or unwilling to abide by a contractual usage limit, You will execute an Order Form for additional quantities of the applicable Services or Content promptly upon Our request, and/or pay any invoice for excess usage in accordance with section 6.2 (Invoicing and Payment).

**7.3. Usage Restrictions.** You will not (a) make any Service or Content available to, or use any Service or Content for the benefit of, anyone other than You or Users, (b) sell, resell, license, sublicense, distribute, rent or lease any Service or Content, or include any Service or Content in a service bureau or outsourcing offering, (c) use a Service to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use a Service to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of any Service or third-party data contained therein, (f) attempt to gain unauthorized access to any Service or Content or its related systems or networks, (g) permit direct or indirect access

to or use of any Service or Content in a way that circumvents a contractual usage limit, (h) copy a Service or any part, feature, function or user interface thereof, (i) copy Content except as permitted herein or in an Order Form or the Documentation, (j) frame or mirror any part of any Service or Content, other than framing on Your own intranets or otherwise for Your own internal business purposes or as permitted in the Documentation, (k) access any Service or Content in order to build a competitive product or service, or (l) reverse engineer any Service (to the extent such restriction is permitted by law).

## **8.0 PROMOTIONAL DISCOUNTS AND AWARDS**

**8.1. General.** Company may periodically offer promotional discounts or awards for certain User activities and accomplishments.

**8.2. Referral Program Discounts and Awards.** Referrers may be eligible to earn discounts and awards for each Qualified Referral referred to the Company during a promotional period and consistent with the terms of the particular promotion ("Referral Program"). Both the Referrer and Referee must be located in the United States or Canada in order for a Referrer to be eligible for any discounts or awards. Discount and award amounts may change from time to time at our discretion. Earned discounts will be communicated by the Company to the Referrer and documented in appropriate correspondence, including but not limited to subscription renewal notices and invoices.

**8.3. Qualified Referrals.** Only Qualified Referrals will result in the awarding of discounts and awards.

**8.4. Referral Representations.** By participating in any Company Referral Program, (i) as a Referrer, you represent and warrant that you have a personal relationship with your Referee(s) or otherwise have the necessary consents to submit their information to the Referral Program; and (ii) you will comply with all applicable Company policies and terms, and any and all applicable laws, rules and regulations in your participation in the Referral Program.

**8.5. Referral Restrictions.** The following is a non-exhaustive list of activities that are not permitted and that will disqualify Referrers and Referees from earning discounts and awards through the Referral Program: (i) self-referral or referral to a person's parent company; (ii) creating fake accounts, blogs, web pages, profiles, websites, links or messages; (iii) any bulk email distribution, submission, or distribution to strangers, or any other promotion that would constitute or appear to constitute unsolicited commercial email or "spam"; (iv) posting your referral link on any page that is not owned and controlled by you, including, but not limited to, any merchant, Facebook, TikTok, or forum page; (v) placement of our logos or mention of our trademarks or tradenames in any ad text, extensions or banner ads; (vi) paid advertising for the purpose of generating traffic directly to your referral link; (vii) misleading or attempting to mislead anyone in connection with the Referral Program, including, but not limited to, misrepresenting your relationship with us or posing as our representative in an official capacity; and (viii) taking any action or making any content that is disparaging or defamatory to us. Multiple accounts created with the same name, address, email address or other identifying feature may be flagged as fraudulent referrals.

**8.6. Fraudulent Activity and Reservation of Rights.** All referrals are subject to our review. We reserve the right to investigate any referral activity that we believe, in our sole discretion, is abusing or has abused the Referral Program or any other promotion. Company reserves the right to rescind and/or bar further participation in promotional events or referral programs, and/or withhold, deny, or cancel any discounts and/or awards if Company, in its sole discretion, deems any referrals as fraudulent, abusive, unethical, suspicious, or otherwise inconsistent with the terms of specific promotions, this Agreement, or any other applicable law or regulation. Company decisions are final. Any suspected or actual cases of fraud activity will be escalated and reviewed in accordance with our fraud process.

**8.7. Termination of Promotions.** We reserve the right to suspend or terminate any promotion, change the program terms, or terminate/modify any particular promotion at any time and for any reason in our sole discretion.

## **9.0 PROPRIETARY RIGHTS AND LICENSES**

**9.1. Reservation of Rights.** Subject to the limited rights expressly granted hereunder, We reserve all rights, title and interest in and to the Services, including all related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth in this Agreement, or in the Order Form.

**9.2. License by Us to Use Content.** We grant to You a worldwide, limited-term license, under Our applicable intellectual property rights and licenses, to use Content acquired by You pursuant to Order Forms, subject to those Order Forms, this Agreement, and the Documentation.

**9.3. Ownership of Your Data.** You grant Us and Our Affiliates a worldwide, limited-term license to host, copy, transmit and display Your Data, and any Non-OPS Applications and program code created by or for You using a Service, as necessary for Us to provide the Services in accordance with this Agreement. Subject to the limited licenses granted herein, We acquire no right, title, or interest from You or Your licensors under this Agreement in or to Your Data or any Non-OPS Application or program code. You grant Us the right to gather data stored on the OPS System for statistical purposes (“Meta Data”) provided that all data are scrubbed of identifying personal markings and are combined with data from other user organizations.

**9.4. Suggestions.** You grant to Us and Our Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into the Services any suggestion, enhancement request, recommendation, correction or other feedback provided by You or Users relating to the operation of the Services.

**9.5. Federal Government End Use Provisions.** We provide the Services, including related software and technology, for federal government end use solely in accordance with the following: Government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not granted under these terms, it must negotiate with Us to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in any applicable agreement.

## **10.0 CONFIDENTIALITY**

**10.1. Definition of Confidential Information.** “**Confidential Information**” means all information disclosed by a party (“**Disclosing Party**”) to the other party (“**Receiving Party**”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information includes Your Data; Our Confidential Information includes the Services and Content; and Confidential Information of each party includes the terms and conditions of this Agreement and all Order Forms (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

**10.2. Protection of Confidential Information.** Except as otherwise permitted in writing by the Disclosing Party, (i) the Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) the Receiving Party shall limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those in this Agreement.

**10.3. Protection of Your Data.** Without limiting the above, We shall maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data. We shall not (a) modify Your Data, (b) disclose Your Data except as compelled by law in accordance with section 10.4 (Compelled Disclosure) or as expressly permitted in writing by You, or (c) access Your Data except to provide the Services or prevent or address service or technical problems, or at Your request in connection with customer support matters.

**10.4. Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

**10.5. Agreed Disclosure.** When You become a customer, You agree to allow Us to reference You as a customer using Our technology on Our website and in print copy or marketing collateral. You will provide Us with an approved company logo that We may publish on Our website and/or marketing collateral to communicate such relationship.

## **11.0 WARRANTIES AND DISCLAIMERS**

**11.1. Our Warranties.** We warrant that (i) the Services shall perform materially in accordance with the Service Level Agreement, and the functionality of the Services will not be materially decreased during a subscription term. For any breach of either such warranty, Your exclusive remedy shall be as provided in sections 14.4 (Termination) and 13.5 (Refund or Payment upon Termination) below.

**11.2. Mutual Warranties.** Each party represents and warrants that (i) it has the legal power to enter into this Agreement, and (ii) it will not knowingly transmit to the other party any Malicious Code (except for Malicious Code previously transmitted to the warranting party by the other party).

**11.3. Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. CONTENT AND BETA SERVICES ARE PROVIDED "AS IS," EXCLUSIVE OF ANY WARRANTY WHATSOEVER. EACH PARTY DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY HOSTING PROVIDERS.

## **12.0 MUTUAL INDEMNIFICATION**

**12.1.** Both OPS and You agree to indemnify and hold each other, its officers, agents and/or employees harmless from and against any and all lawsuits, damages, and expenses, including court cost and attorney's fees, by reason of any claim and/or liability imposed, claimed and/or threatened against either party's officials, agents and/or employees.

**12.2. Indemnification by Us.** We shall defend You against any claim, demand, suit, or proceeding ("**Claim**") made or brought against You by a third party alleging that the use of the Services as permitted hereunder infringes or misappropriates the intellectual property rights of a third party, and shall indemnify You for any damages finally awarded against, and for reasonable attorney's fees incurred by, You in connection with any such Claim; provided, that You (a) promptly give Us written notice of the Claim; (b) give Us sole control of the defense and settlement of the Claim (provided that We may not settle any Claim unless the settlement unconditionally releases You of all liability); and (c) provide to Us all reasonable assistance, at Our expense.

**12.3. Indemnification by You.** You shall defend Us against any Claim made or brought against Us by a third party alleging that Your Data, or Your use of the Services in violation of this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law, and shall indemnify Us for any damages finally awarded against, and for reasonable attorney's fees incurred by, Us in connection with any such Claim; provided, that We (a) promptly give You written notice of the Claim; (b) give You sole control of the defense and settlement of the Claim (provided that You may not settle any Claim unless the settlement unconditionally release Us of all liability); and (c) provide to You all reasonable assistance, at Our expense.



**12.4. Exclusive Remedy.** This section 12.0 states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this section 12.0.

### **13.0 LIMITATION OF LIABILITY**

**13.1 Limitation of Liability.** NEITHER PARTY'S LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL EXCEED THE AMOUNT PAID BY CUSTOMER HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT, PROVIDED THAT IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER HEREUNDER. THE ABOVE LIMITATIONS WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY. HOWEVER, THE ABOVE LIMITATIONS WILL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS UNDER SECTION 6.0 (FEES AND PAYMENT FOR PURCHASED SERVICES).

**13.2. Exclusion of Consequential and Related Damages.** IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

### **14.0 TERM AND TERMINATION**

**14.1 Term of Agreement.** This Agreement commences on the date You first accept it and continues until all subscriptions hereunder have expired or have been terminated.

**14.2. 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 periods equal to the expiring subscription term or one year (whichever is shorter), unless either party gives the other notice of non-renewal at least 60 days before the end of the relevant subscription term.

**14.3. Term of Per-unit Pricing.** Per-unit pricing may be by user, bed, facility, client organization or any other breakout that aligns to the nature of the engagement. At Our discretion, renewals are subject to a pricing increase which will be effective upon renewal and thereafter. Any such pricing increase will not exceed 8.2 percent (8.2%) of the pricing for the applicable Purchased Service or Content in the immediately prior subscription term unless the pricing in the prior term was designated in the relevant Order Form as promotional or one-time.

**14.4. Termination.** Either party may terminate this Agreement (i) at any time without cause upon 60 days written notice or (ii) for cause if a material breach remains uncured after 60 days written notice from one party to the other or if a party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation, or assignment for the benefit of creditors.

**14.5. Refund or Payment upon Termination.** Upon termination by You without cause or termination by Us for cause, any remaining fee balance will be subject to the provisions in sections 6.1(iii) and 14.1. Upon termination by You for cause, We shall refund any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. In no event shall termination relieve You of the obligation to pay any fees due to Us for the period prior to the effective date of termination.

**14.6. Your Data Portability and Deletion.** Data You enter in the applications is Yours. However, if you decide to terminate the Agreement, it is Your responsibility to arrange for the export or download of Your Data prior to the effective date of termination or expiration. After the termination or expiration date, We have no obligation to retain Your data, except as may be legally required.

**14.7. Surviving Provisions.** Sections 6.0 (Fees and Payment for Purchased Services), 9.0 (Proprietary Rights and Licenses), 10.0 (Confidentiality), 11.3 (Disclaimers), 12.0 (Mutual Indemnification), 13.0 (Limitation of Liability), 14.5 (Refund or Payment upon Termination), 14.6 (Your Data Portability and Deletion), 15.0 (Who You Are

Contracting With, Notices, Governing Law and Jurisdiction) and 16.0 (General Provisions) shall survive any termination or expiration of this Agreement.

**15.0 WHO YOU ARE CONTRACTING WITH, NOTICES, GOVERNING LAW AND JURISDICTION**

**15.1. General.** Who You are contracting with under this Agreement; who You should direct notices to under this Agreement; what law will apply in any lawsuit arising out of or in connection with this Agreement; and which courts can adjudicate any such lawsuit, are governed as follows:

If You are domiciled in	You are contracting with	Notices should be addressed to	The governing law is	The courts having exclusive jurisdiction are
Any Country	Organizational Performance Systems, Inc. 1393 Oak Ave. Los Altos, CA 94022	Legal Department c/o Ted Sorensen ted.sorensen@ops1.com	California and controlling United States federal law	Santa Clara County, California, U.S.A.

Any disputes, actions, claims or causes of action arising out of or in connection with this Agreement (or the Service) shall be subject to the exclusive jurisdiction of the state and federal courts located in California.

**15.2. Manner of Giving Notice.** Except as otherwise specified in this Agreement, all notices, permissions, and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing by a trackable mail service, (iii) the second business day after sending by confirmed facsimile, or (iv) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). Notices to You shall be addressed to the system administrator designated by You for Your relevant Services account, and in the case of billing-related notices, to the relevant billing contact designated by You.

**15.3. Agreement to Governing Law and Jurisdiction.** Each party agrees to the applicable governing law above without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts above.

**15.4. Waiver of Jury Trial.** Each party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

**15.5. No Agency.** For the avoidance of doubt, We are entering into this Agreement as principal and not as agent for any other company. Subject to any permitted Assignment under section 16.8, the obligations owed by Us under this Agreement shall be owed to You solely by Us and the obligations owed by You under this Agreement shall be owed solely to Us.

**16.0 GENERAL PROVISIONS**

**16.1. Export Compliance.** Each party shall comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the Services. Without limiting the foregoing, (i) each party represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, and (ii) You shall not permit Users to access or use Services in violation of any U.S. export embargo, prohibition, or restriction.

**16.2. Anti-Corruption.** You have not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Our employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If You learn of any violation of the above restriction, You will use reasonable efforts to promptly notify Our Legal Department at [legal@ops1.com](mailto:legal@ops1.com).

**16.3. Relationship of the Parties.** The parties are independent entities. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties.

**16.4. Third-Party Beneficiaries.** There are no other third-party beneficiaries under this Agreement.

**16.5. Waiver and Cumulative Remedies.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated, the remedies provided in this Agreement are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

**16.6. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.

**16.7. Attorney Fees.** In the event of a dispute relating to this Agreement, the prevailing party shall be entitled to the payment of reasonable attorneys' fees.

**16.8. Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Order Forms), without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. A party's sole remedy for any purported assignment by the other party in breach of this paragraph shall be, at the non-assigning party's election, termination of this Agreement upon written notice to the assigning party. In the event of such a termination, We shall refund to You any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**16.9. Entire Agreement.** This Agreement is the entire agreement between You and Us regarding Your use of Services and Content and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. The parties agree that any term or condition stated in Your purchase order or in any other of Your order documentation (excluding Order Forms and specified Amendments) is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Order Form, (2) this Agreement, and (3) the Documentation.