



Terms of Service

- **PAYMENT OF FEES**

The initial Service Fee (or "Payment" hereinafter), if fixed in amount under this Agreement, is due from CLIENT at the time of contract signing. All subsequent recurring payments shall be due and payable in advance on or before the first day of each contract monthly period beginning on the Effective Date of Service. All Service Fees (or "Variable Payments" hereinafter) for materials and hourly services not fixed in amount, shall be due and payable no later than 15 days from the date of invoice receipt. Payment may be by check, bank debit/credit card, American Express or electronic means such as online bill pay. Each invoice not paid within (15) days of the due date shall be considered delinquent and become subject to a monthly service charge (which the parties agree is not a penalty but which is the cost of the additional administrative expense) equal to the lesser of 5% of the invoice amount due or \$100.00. In addition, interest shall be added at an effective monthly interest rate of 3% retroactive to the due date. During any delinquency, OSOM shall be relieved of any obligation to perform any further Services under this Agreement until all amounts due to OSOM have been paid. If OSOM files suit to collect any portion of its Fees, the CLIENT shall also pay OSOM's collection costs, including reasonable legal fees, which shall be defined as OSOM's actual attorneys fees expended or 33.3% of the amounts due at the time of filing, whichever is greater.

- **ATTORNEYS' FEES**

In the event any litigation is brought by either party in connection with this Agreement, OSOM shall be entitled to recover from CLIENT all the costs, reasonable attorneys' fees, and other expenses incurred by OSOM in the litigation

- **LIMITATIONS OF LIABILITY**

OSOM's entire liability, and CLIENT's exclusive remedy in any cause of action based on contract, tort or otherwise in connection with any Services furnished pursuant to this Agreement, including its Exhibits, shall be limited to the total Fees paid by CLIENT to OSOM for services rendered in the month of the claim's occurrence. No action by the CLIENT, regardless of form, arising out of this Agreement, may

be brought more than 90 days after the occurrence of the event giving rise to such cause of action.

CLIENT expressly agrees that use of the Service is at CLIENT'S sole risk. Neither OSOM nor its licensors, agents, employees, contractors, etc involved in creating, delivering or maintaining the Services shall be liable for any direct, indirect, incidental, special, exemplary and/or consequential damages arising out of use of the Services or inability to use the Services or out of any breach of any warranty.

DISCLAIMER: NEITHER OSOM NOR ANY OF ITS LICENSORS, EMPLOYEES, CONTRACTORS, OR AGENTS WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. NEITHER OSOM NOR ANY OF ITS LICENSORS, EMPLOYEES, CONTRACTORS, OR AGENTS MAKE ANY WARRANTY AS TO THE RESULTS TO BE OBTAINED FROM USE OF THE SERVICES OR THAT THEY WILL BE COMPATIBLE WITH ANY PARTICULAR HARDWARE OR SOFTWARE. THE SERVICES ARE MADE AVAILABLE ON A "BEST EFFORT" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, OTHER THAN THOSE WARRANTIES WHICH ARE IMPLIED BY AND INCAPABLE OF EXCLUSION, RESTRICTION, OR MODIFICATION UNDER THE LAWS APPLICABLE TO THIS AGREEMENT. CLIENT ASSUMES ALL RISKS AND RESPONSIBILITIES FOR SELECTION OF THE SERVICES TO ACHIEVE CLIENT'S INTENDED RESULTS. CLIENT HEREBY ACKNOWLEDGES THAT THE SERVICES MAY NOT BE AVAILABLE OR MAY BECOME UNAVAILABLE DUE TO ANY NUMBER OF FACTORS INCLUDING, WITHOUT LIMITATION, SCHEDULED OR UNSCHEDULED PERIODIC SYSTEM MAINTENANCE, ACTS OF GOD, TECHNICAL FAILURE OF ANY HARDWARE OR SOFTWARE PROVIDED WITH THE SERVICES, TELECOMMUNICATIONS INFRASTRUCTURE DELAYS OR INTERRUPTIONS, OR DELAY OR DISRUPTION ATTRIBUTABLE TO VIRUSES, DENIAL OF SERVICE ATTACKS, INCREASED OR FLUCTUATING DEMAND, ACTIONS AND OMISSIONS OF THIRD PARTIES, OR ANY CAUSE



REASONABLY BEYOND THE CONTROL OF OSOM. THEREFORE, OSOM EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY REGARDING THE AVAILABILITY, ACCESSIBILITY, OR PERFORMANCE OF THE SERVICES.

CLIENT assumes the entire cost of any damage resulting from CLIENT's use of the Services. Except with respect to claims based upon willful, malicious or grossly negligent conduct of the liable party, neither OSOM, nor any of its employees, agents, suppliers, licensors or anyone else who has been involved in the creation, production, or delivery of the Services shall be liable for any damages whatsoever (including, without limitation, damages for loss of business profits, business interruption, loss of business information, loss of goodwill, work stoppage, hardware or software disruption, impairment or failure, repair costs, time value or other pecuniary loss) arising out of the use or inability to use the Services, or the incompatibility of the Services with any hardware, software or usage, even if CLIENT has been advised of the possibility of such damages.

CLIENT shall indemnify and hold OSOM harmless from and against any and all claims, liabilities, losses, damages or judgments, including all reasonable legal fees and expenses related thereto (i) that arise from or are connected with the CLIENT's modification, use or distribution of the Services not in strict accordance with this Agreement; (ii) any misrepresentation or any breach of any warranty, covenant or Agreement on the part of CLIENT; and/or (iii) from any third party claim or action against OSOM for injuries or damage to persons or property caused or claimed to have been caused by the negligent or intentional acts or omissions of CLIENT, its agents, employees and contractors, etc. while in the course of performing work under this Agreement. CLIENT's obligations under this Section are contingent upon (a) OSOM giving prompt written notice to CLIENT of any such claim; (b) OSOM allowing CLIENT to control the defense and any related settlement of any such claim; and (c) OSOM furnishing CLIENT with reasonable assistance in the defense of any such claim, so long as CLIENT pays OSOM's reasonable out-of-pocket expenses.

OSOM shall have no obligation under this Agreement for any claim to the extent that such claim results from (a) combination or use of the Services

with equipment, services, or processes not furnished by OSOM; (b) modifications to the Services made other than by OSOM; (c) failure of CLIENT to use updated or modified Services provided by OSOM to avoid a claim; (d) compliance by OSOM with designs, plans or specifications furnished by or on behalf of CLIENT; or (e) any opening of or other tampering with Services by non-OSOM personnel.

- **FORCE MAJEURE**

Neither OSOM nor CLIENT shall be held responsible for any delay or failure in performance under this Agreement arising out of causes beyond its control, or without its fault or negligence. Such causes may include, but are not limited to, fires, flood, power disruptions, communications carrier disruptions, terrorist acts, strikes, embargoes, shortages or supplies of raw materials, or components or finished goods, acts of God, acts of regulatory agencies, or national disasters.

- **OTHER CLIENT RESPONSIBILITIES**

Taxes related to Services, Documentation and Support Services purchased, licensed or provided pursuant to this Agreement shall be paid by CLIENT .

CLIENT is solely responsible for maintaining the confidentiality of Passwords, including restricting the use of any such Passwords by CLIENT's designated users. CLIENT shall be responsible for all use of the Service accessed through CLIENT's Password. OSOM shall not have any responsibility or obligation to CLIENT, CLIENT's designated users, or other users of the Service to monitor, supervise or oversee the contents of files stored on the Service. OSOM is not responsible for providing CLIENT with passwords in the event of a forgotten password.

Should back up Services be included in the Services, the following will apply: CLIENT data shall remain encrypted and inaccessible without the correct password. CLIENT shall be responsible for and must provide all Internet, telephone and other equipment and Services necessary to access the Service. In addition, CLIENT shall maintain a primary electronic file of all materials stored in the Service. CLIENT shall



not utilize the Backup Service as a substitute for primary electronic file maintenance. CLIENT shall not use the backup Service for storage, possession or transmission of any information, the possession, creation or transmission of which violates any state, local or federal law, including without limitation, stolen materials, obscene materials or child pornography. CLIENT's backup files maintained by OSOM are subject to examination by law enforcement officials or others without CLIENT's consent upon presentation to CLIENT or OSOM of a search warrant or subpoena. CLIENT agrees to indemnify OSOM against liability for use of CLIENT's account in cases where liability is a direct result of CLIENT's misuse or negligent use of its account(s). OSOM may make copies of all files stored as part of the backup and recovery of its own servers utilized in connection with some of the Services. OSOM is not obligated to archive such copies and will utilize them only for its own backup purposes. They will not be accessible to CLIENT.

- **PROPRIETARY INFORMATION**

For purposes of this Agreement, the term "Proprietary Information" shall mean all of the information, data and software furnished by one party to the other, whether in oral, written, graphic or machine-readable form, and shall include but not be limited to, source and object code, software tool specifications, functions and features, integration and shared data block specifications, financial statements, corporate and stock information, file layouts, marketing strategies, business, product or acquisition plans, current business relationships or strategies and customer lists. "Proprietary Information" shall not include information which: (a) is or becomes available to the general public through no fault of either party; (b) is independently developed by non-disclosing party; (c) is rightfully received by the non-disclosing party from a third party without a duty of confidentiality; or (d) is required to be disclosed by court order or operation of law. Before disclosing any Proprietary Information under court order or operation of law, the non-disclosing party shall provide the disclosing party reasonable notice and the opportunity to object to or limit such disclosure.

Each party acknowledges that, in and as a result of visit(s) to the other party's facilities and/or discussions with a party's officers and employees, a party shall or may be making use of or acquiring Proprietary Information. As a material inducement to disclose such Proprietary Information, each party covenants and agrees that it shall not, except with the prior written consent of the other party, at any time directly by itself or indirectly through any agent or employee: i) copy, modify, disclose, divulge, reveal, report, publish or transfer to any person or entity, for any purpose whatsoever, any Proprietary Information or (ii) use Proprietary Information for any purpose other than in connection with the performance of this Agreement. Failure to mark any of the Proprietary Information as confidential or Proprietary Information shall not affect such information's status as protected Proprietary Information under this Agreement.

Each party covenants and agrees that all right, title and interest in any Proprietary Information shall be and shall remain the exclusive property of the disclosing party.

- **OWNERSHIP RIGHTS**

CLIENT retains exclusive ownership of all Information Management assets, supplies and other resources existing just prior to commencement of this Agreement. Except as expressly set forth on any Statement of Work entered into by the parties, all right (including all Intellectual Property Rights), title and interest in and to all products, Services and materials provided to CLIENT by OSOM under this Agreement shall be and remain the property of OSOM exclusively. CLIENT shall have no right, title or interest in or to any products, Services or materials provided by OSOM except as expressly set forth in this Agreement or any applicable Statement of Work. OSOM shall retain any and all Intellectual Property Rights in connection with any software, source code, object code, or any other work product it contributes in connection with the performance of the Services. For purposes of this section, the term Intellectual Property Rights shall mean: (a) all inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all patents, patent applications, and



patent disclosures, together with all reissuances, continuations, continuations-in-part, revisions, extensions, and reexaminations thereof; (b) all trademarks, service marks, trade dress, logos, trade names, and corporate names, together with all translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith; (c) all copyrightable works, all copyrights, and all applications, registrations, and renewals in connection therewith; and (d) all trade secrets and confidential business information (including ideas, research and development, know-how, formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings, specifications, customer and supplier lists, pricing and cost information, and business and marketing plans and proposals).

- **CHOICE OF LAW**

The validity, construction, interpretation and effect of this Agreement shall be governed by and in accordance with the laws of the Commonwealth of Virginia without regard to its conflicts and/or choice of law principles. The Parties expressly agree that this Agreement shall not be subject to, or governed by, Virginia's Uniform Computer Information Transactions Act, Virginia Code Section 59.1-501.1, et seq.

- **CONSENT TO JURISDICTION**

The Parties agree that any dispute between them arising out of, under or in connection with this Agreement and/or related to any matter which is the subject of this Agreement shall be subject to the exclusive jurisdiction of the courts located within the Commonwealth of Virginia.

- **GENERAL PROVISIONS**

(a) All legal notices shall be in writing to the addresses contained in this Agreement, unless otherwise agreed, with valid proof of receipt or valid proof of transmission; (b) OSOM's failure to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by OSOM in writing; (c) OSOM may

subcontract the performance of certain Services to third parties. (d) OSOM reserves the right to assign this Agreement to any third party that acquires all or substantially all of OSOM's relevant business or assets; (e) The section titles in this Agreement are solely used for the convenience of the parties and have no legal or contractual significance; (f) CLIENT cannot transfer this contract but can terminate at any time after the initial term with 30 days advance written notice; (g) The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement; (h) This Agreement may not be modified or terminated unless agreed upon by both parties, and no modification, termination or attempted waiver of any of the provisions hereof shall be binding unless in writing and signed by both parties; and (i) This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, all of which together shall constitute one and the same instrument.

- **TERMINATION AND EXTENSION**

Either party can terminate this Agreement at any time after the initial term or at the end of a current or future extension period as long as 45 days advance written notice is given. If during the initial term or any extensions thereof, CLIENT cancels service under this Agreement without proper notice and in the absence of a default by OSOM of any material provision of this Agreement, CLIENT will remain liable for all fees specified in this Agreement for the initial term and any applicable extensions thereof. In such case, if fees are based on fixed unit prices, the monthly fee will be calculated based on the latest full month's volume. If an agreement is bundled with multiple services, the service with the longest renewal period will be the default renewal period for the entire agreement.

- Upon termination, CLIENT will be responsible for any time or costs associated with the removal of services or hardware at the current hourly billable rate. If requested by CLIENT, subsequent to any termination of this Agreement, and at the then



prevailing hourly billing rate, OSOM will assist and comply with CLIENT's reasonable directions to cause the orderly transition and migration of the Services to CLIENT or a third party contractor to whom CLIENT chooses to transfer the Services.

If one party defaults in the performance of any material provision of this Agreement, the non-defaulting party may give written notice to the defaulting party that this Agreement shall be terminated unless the default is remedied within thirty (30) days. If the non-defaulting party gives such notice and the default is not remedied during such thirty (30) day period, then this Agreement shall be automatically terminated at the end of that period, except that, if CLIENT is the defaulting party, CLIENT shall remain liable for all fees specified in this Agreement as previously described.

If requested by CLIENT, subsequent to any termination of this Agreement, and at the then prevailing hourly billing rate, OSOM will assist and comply with CLIENT's reasonable directions to cause the orderly transition and migration of the Services to CLIENT or a third party contractor to whom CLIENT chooses to transfer the Services.

Unless this agreement is terminated, the initial term shall be automatically extended based on the "Renewal Period" of the Service Agreement. In such an event OSOM reserves the right to adjust its fees to its then prevailing rates.

- RETURN OF MATERIALS

Upon termination of OSOM's performance of Services for CLIENT or the termination of this Agreement, each party shall promptly deliver to the other all copies and embodiments, in whatever form, of Proprietary Information and all other materials containing any Proprietary Information, which is in such party's possession or control, no matter where such material is located. Licenses for hardware or software that are provided as a component in the service agreements will terminate with the termination of this agreement and all such components will be returned in working order as supplied.

- VIOLATIONS OF STATE LAWS

The parties agree that if any clause and/or term contained in these Terms of Service are found to be in violation of the laws, policies, or statutes of any state, that clause and/or term shall be deemed stricken and the remainder of this Agreement and these Terms of Service shall remain in full force and effect.

() . (Date: _____)CLIENT's initials signify that he/she has read and understands that these Terms of Service are a part of the Service Agreement