

ONS On-Demand Subscription Agreement

This ONS On-Demand Subscription Agreement (this “**Agreement**”) is between ONCOLOGY NURSING SOCIETY, a Pennsylvania nonprofit corporation with principal offices at 125 Enterprise Drive, Pittsburgh, PA 15275 (“**ONS**”) and the customer identified on the corresponding orders referencing this Agreement (the “**Customer**”).

Background

This Agreement states the terms on which ONS will permit Customer to use ONS On-Demand, a web-hosted service for the delivery of oncology-related products, services, and content. Intending to be legally bound, the parties agree as follows:

1. The ONS On-Demand Service

1.1. **Subscription.** Subject to the terms and conditions of this Agreement and payment of all applicable fees, ONS grants to the Customer a limited, non-exclusive, non-transferable, non-sublicensable, license during the Subscription Period to use the Service for the Customer’s own internal business purposes. The Service is licensed, not sold. The Customer acknowledges that it does not have any right to receive the Service in object code or source code form and that the Service is hosted by ONS or its third-party hosting provider.

1.2. **Subscription Period.** Unless otherwise stated in an Order, the Subscription Period begins on the Activation Date, and unless terminated as provided herein, continues until the one-year anniversary of the Activation Date, at which time the Subscription Period will automatically renew for successive one-year terms unless either party notifies the other at least 30 days prior to the expiration of the then-current Subscription Period of intent not to renew. The Customer may add additional subscriptions during the Subscription Period, prorated for the remainder of the then-current Subscription Period.

1.3. **Users.** The Service may only be used by the Customer’s Users as outlined in an Order and subject to this Agreement. To use the Service, a User may be asked to provide certain information to ONS to create and maintain an ONS Account, which may require the User to agree to ONS’s Privacy Policy and Terms of Use, which are available at the Website. As between ONS and the Customer, if there is a conflict between this Agreement and the Terms of Use, this Agreement will control. It is a condition to use the Service that all information provided is correct, current, and complete.

1.4. **Orders.** All Orders are subject to this Agreement. Except as set forth in this Agreement or an Order (but only with respect to that Order), an Order is a noncancellable and nonrefundable commitment by the Customer to subscribe to the Service as stated in the Order. ONS reserves the right to cancel an Order for which payment has not been received within 30 days.

1.5. **Courses.** During the Subscription Period, the Customer may order Courses. Upon the Customer’s request for a Course, ONS will issue a quote, which will be valid for 30 days (or the termination or expiration of the Subscription Period if ending earlier). ONS will not make a Course available to the Customer until the Customer has paid for the Course in full. The Customer has 12 months from the date when the Customer paid for Course to assign the Course. The Customer is solely responsible for monitoring its usage and assigning Courses. No refunds or credits will be given for Courses that have not been assigned or used. Once the Customer has assigned a Course, the Course will be available for the time period applicable to the specific Course (i.e., typically 90 or 180 days), after which time access to the Course will expire.

1.6. **Voucher/Campaign Codes.** If applicable and unless otherwise stated in an Order, any voucher or campaign codes unused or unassigned as of the Activation Date will be converted to Courses, subject to the original expiration dates.

1.7. **Service Levels.** ONS will use commercially reasonable efforts to ensure that the Service is available 99.95% monthly to the Customer, except for: (a) scheduled downtime for maintenance; (b) while ONS or its third-party hosting provider is making emergency updates or performing emergency maintenance to the Service; (c) during any valid suspension of the Service pursuant to the Agreement; and (d) downtime caused by force majeure events, the Customer’s Subscriber’s hardware, software, data, or acts or omissions, interoperability issues with third-party hardware or software, third-party supplier or equipment failures, utility outages, or other downtime outside of ONS’s reasonable control. ONS will not be liable if for any reason all or any part of the Service is unavailable at any time or for any reason.

1.8. **Support.** ONS will provide standard support for the Service to the Customer at no additional charge.

1.9. **Security and Privacy.** ONS will implement and maintain an industry-standard information security program with administrative, physical, and technical safeguards designed to protect the integrity of Customer Data. The Customer agrees that ONS and its service providers may transfer, store, and process Customer Data in locations other than Customer's country.

1.10. **Changes to the Service.** ONS may modify the Service at any time, including removing features or functions or reducing service levels. If any modification materially reduces the functionality of the Service under an outstanding Order, the Customer may within 30 days of notice of the modification terminate the Order, without cause, or terminate this Agreement without cause if that Order is the only one outstanding. The Customer agrees that it has not relied on the availability of any future functionality of the Service or any other future product or service in executing this Agreement or any Order. The Customer acknowledges that information provided by ONS regarding future functionality should not be relied upon to make a purchase decision.

1.11. **Affiliates.** The Customer may permit its Affiliates to exercise the Customer's license rights hereunder subject to such Affiliate entering into a written agreement with the Customer at least as protective of ONS's rights as this Agreement and provided that the Customer will be fully responsible for its Affiliates' compliance with this Agreement and liable for any breach of the terms and conditions of the Agreement applicable to the Customer by its any Affiliate as if such Affiliate were the Customer hereunder.

2. Fees.

2.1. **Fees.** The Customer shall pay ONS the fees outlined in an Order or required by this Agreement. ONS will not fulfill an Order until all fees stated therein have been paid; the Customer will be responsible for delays in using the Service or Courses as a result of payment delays. ONS will not provide access to Courses until the Customer has paid for the Courses. Fees are in US dollars. Unless otherwise stated in an Order, fees will be due annually in advance, with the fees for the first year of the Subscription Period invoiced upon execution of the applicable Order. Fees for each successive Subscription Period are due on the anniversary of the Activation Date. Invoices serve as confirmations of amounts owed, and the Customer's payments are due on the dates required pursuant to this Section 2.1, regardless of whether the Customer receives an invoice, or when. Any invoice issued under this Agreement is due and payable according to the payment terms in the Order, if applicable, or within 30 days from the invoice date.

2.2. **Disputed Billing.** The Customer shall pay all fees without setoff, recoupment, counterclaim, deduction, debit, or withholding. If the Customer believes that ONS has billed the Customer incorrectly, the Customer must give notice to ONS no later than 30 days from the date of the invoice in which the error or problem appeared in order to be eligible for an adjustment or credit. Adjustments or credits will be issued in the good faith and reasonable discretion of ONS if the Customer is disputing fees reasonably and in good faith and is cooperating diligently to resolve the dispute. ONS is released from claims for disputed invoices where notice is given outside of 30 days from the date of the invoice. This provision sets out the Customer's sole remedy for disputed billing.

2.3. **Late Payments.** Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance or the maximum permitted by law, whichever is lower, and costs of collection.

2.4. **Fee Increases.** For any renewal of a Subscription Period, ONS may increase the fees by no more than 5% of the fees applicable to the then-current Subscription Period. If the fees for the then-current Subscription Period were subject to a discount stated in the applicable Order, the cap on fee increases will be calculated without regard to the discount. Except as expressly provided herein, ONS will not be required to refund fees under any circumstances.

2.5. **Taxes.** Prices are exclusive of any taxes unless otherwise stated. The Customer is responsible for all taxes, except those directly relating to ONS's net income or gross receipts. ONS will invoice the Customer for sales tax when required to do so and the Customer will pay the tax unless the Customer provides ONS with a valid tax exemption certificate.

2.6. **Billing Information.** If the Customer provides ONS with credit card information for payment, the Customer acknowledges that an invoice may not be sent and the Customer authorizes ONS to charge the credit card the fees stated in the Order (including any renewals). If the Customer requires the use of a purchase order or purchase order number, the Customer: (a) must provide the purchase order number at the time of purchase; and (b) agrees that any terms and conditions on a Customer purchase order will not apply to this Agreement and are void. The Customer is responsible for providing complete and accurate billing and contact information to ONS and notifying ONS of any changes to such information.

3. Term; Termination

3.1. **Term.** The term of this Agreement (the “**Term**”) begins on the Effective Date, and unless terminated earlier, continues until the termination of the Subscription Period. If the Subscription Period automatically renews for successive one-year periods on the anniversary of the Activation Date in accordance with Section 1.2, the Term will automatically renew for equivalent periods.

3.2. **Termination.** Either party may terminate this Agreement if: (a) the other party has materially breached the Agreement and fails to cure the breach within 30 days following written notice by the aggrieved party; or (b) the other party ceases its business operations or becomes subject to insolvency proceedings. ONS may also terminate the Agreement if it has the right to suspend under Section 3.3.

3.3. **Suspension.** ONS may revoke all licenses granted hereunder and suspend the provision of the Service if: (a) the Customer fails to pay any undisputed fees due and fails to remedy such failure within 10 business days of receipt of ONS’s written notice; (b) ONS reasonably believes that the Service is being used in violation of this Agreement and the Customer fails to remedy such breach within 5 business days of receipt of ONS written notice or the Customer does not cooperate with ONS’s reasonable investigation of any suspected material violation of the this Agreement at ONS’s expense; (c) there is an attack on the Service or another event that ONS reasonably believes that the suspension of the Service is necessary to protect the Service; or (d) ONS is required by law or a regulatory or government body to suspend the Service. ONS will endeavor to give the Customer advance notice of a suspension under this Section 3.3 of at least 24 hours unless ONS does not have advance notice of a suspension or if ONS determines in its reasonable commercial judgment that a suspension on shorter or contemporaneous notice is necessary to protect ONS or its other customers from imminent and significant operational, legal, or security risk.

3.4. **Effect of Termination.** Upon termination of this Agreement: (a) the Subscription Period will terminate; (b) the Customer’s rights to use the Service will cease and the Customer shall discontinue all use the Service; (c) the Customer shall pay in full within 30 days all amounts owed to ONS; (d) the Customer will not be able to assign any unassigned Courses, but Users to whom Courses have already been assigned may continue to use the Courses, subject to the terms and conditions of this Agreement; and (e) upon ONS’s request within 45 days certify to ONS in writing the Customer’s compliance with this Section 3.3. Upon the Customer’s request made within 30 days after the effective date of termination and contingent upon payment of all amounts due under this Agreement, ONS will make standard reports available to the Customer for export or download. After those 30 days, ONS will have no obligation to maintain or provide Customer Data and may delete or destroy all copies of Customer Data in ONS’s systems or otherwise in ONS’s possession or control. Provisions of this Agreement that by their nature survive termination will so survive, including but not limited to Section 2 (Fees), Section 3 (Term; Termination), Section 5 (Customer Responsibilities and Restrictions), Section 6 (Intellectual Property), Section 7 (Confidentiality), Section 8 (Limited Warranty and Disclaimer), Section 9 (Limitations of Liability), Section 10 (Indemnification), Section 11 (General), and Section 12 (Definitions).

4. Customer Data

4.1. **Customer Data.** The Customer has sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data submitted to the Service. The Customer has secured and will maintain all rights, permissions, and consents and comply with any laws necessary to allow the operation of the Service and to permit ONS to process, store, and transfer Customer Data. The Customer acknowledges that Customer Data does not include ONS Accounts, which are not provided to the Customer either through the Service or by ONS.

4.2. **Use of Customer Data.** ONS shall not: (a) access, process, or otherwise use Customer Data other than as necessary to facilitate the Service; or (b) give Customer Data access to any third party, except ONS’s subcontractors that have a need for such access to facilitate the Service and are subject to a reasonable written agreement governing the use and security of Customer Data. Further, ONS shall exercise reasonable efforts to prevent unauthorized disclosure or exposure of Customer Data.

4.3. **Risk of Exposure.** The Customer recognizes and agrees that hosting data online involves risks of unauthorized disclosure or exposure and that, in using the Service, the Customer assumes such risks. ONS offers no representation, warranty, or guarantee that Customer Data will not be exposed or disclosed through errors or the actions of third parties.

4.4. **Privacy Policy.** Customer acknowledges ONS’s privacy policy at the Website and the Customer recognizes and agrees that nothing in this Agreement restricts ONS’s right to alter such privacy policy.

4.5. **De-Identified Data.** ONS may use, reproduce, sell, publicize, or otherwise exploit De-Identified Data in any way, in its sole discretion, including without limitation aggregated with data from other customers.

4.6. **Erasure.** ONS may permanently erase Customer Data if the Customer's account is delinquent, suspended, or terminated for 30 days or more, without limiting ONS's other rights or remedies.

4.7. **Required Disclosure.** Notwithstanding anything to the contrary in this Section 4, ONS may disclose Customer Data as required by applicable law or by proper legal or governmental authority. ONS shall give the Customer prompt notice of any such legal or governmental demand and reasonably cooperate with the Customer in any effort to seek a protective order or otherwise to contest such required disclosure, at the Customer's expense.

4.8. **Excluded Data.** The Customer warrants that (a) it has not and will not transmit Excluded Data, or permit transmission of Excluded Data, to ONS or its computers or other media and, (b) to the best of its knowledge, Customer Data does not and will not include Excluded Data. The Customer shall inform ONS of any Excluded Data within Customer Data promptly after discovery (without limiting ONS's rights or remedies). The Customer recognizes and agrees that: (x) the provisions of this Agreement related to Customer Data do not apply to Excluded Data; (y) ONS has no liability for any failure to protect Excluded Data or comply with laws and regulations relating thereto; and (z) ONS's systems are not intended for management or protection of Excluded Data and may not provide adequate or legally required security for Excluded Data. ONS is not responsible or liable for any data exposure or disclosure or related loss to the extent that it involves Excluded Data.

5. Customer's Responsibilities and Restrictions

5.1. **Customer's Responsibilities.** The Customer is responsible and liable for: (a) the use of the Service by the Customer and its Users, including but not limited to unauthorized User conduct and any User conduct that would violate this Agreement applicable to Customer; and (b) any use of the Service through Customer's account, whether authorized or unauthorized.

5.2. **Unauthorized Access.** The Customer shall take reasonable steps to monitor and prevent unauthorized use of the Service, including without limitation by protecting its passwords and other log-in information. The Customer shall notify ONS immediately of any known or suspected unauthorized use of the Service or breach of its security and shall use best efforts to stop said breach.

5.3. **No Sharing.** The Customer shall not share subscriptions, Courses, or use the Service in circumvention of any quantity limits stated in an Order.

5.4. **Customer Equipment.** The Customer shall keep and maintain, at the Customer's expense, all computer hardware and equipment needed to use the Service, and pay all access charges (e.g., ISP fees) incurred in connection with using the Service.

5.5. **Compliance with Laws.** The Customer shall comply with all applicable laws and regulations in using the Service.

5.6. **Cooperation.** The Customer shall cooperate with and assist ONS as reasonably requested to enable ONS to exercise ONS's rights and perform its obligations in connection with this Agreement.

5.7. **General Restrictions.** The Customer shall not, and shall not permit its Users or any third-party to: (a) modify, adapt, resell, rent, lease, loan, create or prepare derivative works based upon the Service or any part thereof (Subscriber agrees that any works resulting from such actions are derivative works of the Service and as such are the sole and exclusive property of ONS or its licensor); (b) use the Service other than in accordance with its Documentation or copy the Service except as expressly permitted hereunder; (c) use the Service in contravention of any applicable laws or regulation; (d) remove any product identification, proprietary, copyright or other notices contained in the Service; (e) use Service in any manner that infringes intellectual property of ONS or another party, (f) use the Service for service bureau or time-sharing purposes or permit the Service to be used by or for the benefit of any other person or entity; (g) sublicense, sell, assign, transfer or disclose the Service or any copy thereof to any other party not an User of Customer, (h) decompile, disassemble or otherwise reverse engineer the Service; or (i) use the Service in order to build a competitive product or service using similar ideas, features, functions or graphics of the Service, or to copy any ideas, features, functions or graphics of the Service.

5.8. **Use Guidelines.** The Customer shall not, and shall not permit its Users or any third-party to: (a) interfere or disrupt the integrity or performance of the Service and shall use commercially reasonable efforts to prevent unauthorized control or tampering of any other unauthorized use of the Service or the systems operated by or on behalf of ONS to make available the Service; (b) attempt to gain unauthorized access to the Service or ONS's or its third-party hosting providers' related systems or networks; (c) use the Service in a United States embargoed country or in violation of any applicable export law or regulation (including any United States export laws or regulations); (d) use the Service in order to (1) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (2) send or store infringing, obscene, threatening, libelous, or otherwise unlawful, unsafe, malicious, abusive or tortious material,

including material harmful to children or violative of third-party privacy rights; or (3) send or store material containing Service viruses, security vulnerabilities, worms, Trojan horses or other harmful or malicious computer code, files, scripts, agents or programs.

5.9. **Third-Party Products.** If the Customer uses a Third-Party Product, the Customer grants ONS permission to allow the provider of that Third-Party Product to access Customer Data as required for the interoperation of that Third-Party Product with the Service. The Customer agrees that: (a) the Customer grants ONS a right to use a Third-Party Product to the extent necessary to perform its obligations under this Agreement; (b) ONS is not responsible for any disclosure, modification, or deletion of Customer Data resulting from access by a Third-Party Product; (c) ONS will not be liable for any act or omission of the third party, including the third party's access to or use of Customer Data or other information or reports; (d) any Customer Data submitted to the Service from a third-party service, product, website, or application will be Customer Data; (e) ONS does not warrant or support any service, product, website, or application provided by a third party; and (f) the Customer shall comply with all applicable terms and conditions of any Third-Party Products. For interoperability, the Customer may also be required to obtain access to Third-Party Products from their providers and may be required to grant ONS access to the Customer's accounts on the Third-Party Product. If the provider of a Third-Party Product ceases to make the Third-Party Product available for interoperation with the Service on reasonable terms, ONS may cease providing the Service features without entitling the Customer to any refund, credit, or other compensation.

5.10. **Suspension.** If ONS suspects any breach of the requirements of this Section 5, including without limitation by Users, ONS may suspend the Customer's use of the Service without advanced notice, in addition to such other remedies as ONS may have.

6. Intellectual Property

6.1. **Ownership.** All right, title and interest in and to the Service, Courses, and Documentation, including without limitation all copies, modifications and derivatives (in whole or in part) thereof, and all Intellectual Property Rights thereto, are and will remain the exclusive property of ONS and/or its licensors. ONS and its licensors reserve any and all rights, implied or otherwise, which are not expressly granted to the Customer hereunder.

6.2. **Feedback.** ONS has not agreed to and does not agree to treat as confidential any Feedback the Customer or Users give to ONS, and nothing in this Agreement or in the parties' dealings arising out of or related to this Agreement will restrict ONS's right to use, profit from, disclose, publish, keep secret, or otherwise exploit Feedback, without compensating or crediting the Customer. Feedback will not be considered the Customer's trade secret.

6.3. **Customer Marketing.** The Customer agrees to participate in a case study featuring the Customer's use of the Service. The Customer will provide quotes and other materials to ONS for the case study. The Customer grants ONS the right to use the provided materials and the Customer's name, logo, and trademarks to identify Customer as a customer of ONS on ONS's website, in a case study, in press articles, and in other marketing materials. The Customer may opt to exclude its name and logo from this use by emailing ONS at marketing@ons.org with the subject matter stating, "Non-use of Customer Name" and indicating which items to remove.

6.4. **Third-Party Marks.** Other trademarks or logos used in the Service are the trademarks or logos of their respective owners, which ONS uses with permission of the owner for identification purposes only.

7. Confidentiality

7.1. **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. The Customer's Confidential Information includes Customer Data (subject to the rights expressly granted to ONS herein); ONS's Confidential Information includes the Service; and Confidential Information of each party includes the terms and conditions of all Order (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: (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (c) is received from a third party without breach of any obligation owed to the Disclosing Party; or (d) was independently developed by the Receiving Party.

7.2. **Protection of Confidential Information.** The Receiving Party will (a) use the same degree of care that it uses to protect the confidentiality of its confidential information of like kind (but not less than reasonable care); (b) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement; and (c) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those employees, consultants, legal and

financial professionals, insurers, and service providers of the Receiving Party and its Affiliates who need that access for purposes consistent with this Agreement and who are bound by confidentiality obligations with the Receiving Party with protections no less stringent than those herein (“**Representatives**”). The Disclosing Party will be liable for a violation of those confidentiality obligations by its Representatives.

7.3. **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 Receiving Party shall disclose only that portion of Confidential Information that, on the advice of the Receiving Party’s legal counsel, is legally required to be disclosed and the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

7.4. **Injunctive Relief.** The Receiving Party acknowledges that any violation of this Section 7 would cause irreparable harm to the Disclosing Party not adequately compensable by monetary damages. In addition to other relief, it is agreed that injunctive relief shall be available without the necessity of posting bond to prevent any actual or threatened violation of such provisions.

8. Limited Warranty; Disclaimer

8.1. **Mutual Representations.** Each party represents and warrants to the other party that: (a) it is duly organized, validly existing, and in good standing as a corporation or other entity under the laws of the jurisdiction of its incorporation or other organization; (b) it has, and throughout the Term, will retain, the full right, power, and authority to enter into the Agreement and perform its obligations hereunder; (c) the execution of this Agreement by its representative has been duly authorized by all necessary corporate or organizational action of such party; (d) when executed and delivered by both parties, this Agreement will constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms.

8.2. **Limited Warranty.** ONS represents and warrants that, during the Subscription Period, the Service will perform materially as described in the Documentation.

8.3. **Sole Remedy.** If ONS breaches the limited warranty contained in Section 8.2, the Customer’s sole and exclusive remedy will be for ONS to correct the problem giving rise to the breach as promptly as reasonably possible, or at ONS’s election, to refund the Customer the fees actually paid by the Customer for the Service for the period of the time when ONS’s breach materially impaired the Customer’s ability to use the Service. ONS will not be obligated to remedy any breach of warranty or refund fees to the extent the breach was caused by: (a) the Customer’s failure to comply with this Agreement; (b) the Customer’s acts or omissions; (c) the Customer’s modification to the Service that ONS did not approve; (d) a Third-Party Product; (e) the Customer’s combination of the Service with any non-ONS hardware, software, or data; or (f) a cause beyond ONS’s reasonable control that could not be protected against by commercially reasonable industry standards, including but not limited to viruses, hackers, failure of electric power, or Internet downtime.

8.4. **Disclaimer.** Except as stated in this Section 8, ONS disclaims and does not make any other representation or warranty of any kind, whether express or implied, including but not limited to any warranties regarding accuracy, quality, reliability, correctness, completeness, comprehensiveness, currency, suitability, availability, compatibility, merchantability, fitness for a particular purpose, title, non-infringement, or otherwise (regardless of any course of dealing, custom or trade usage). The Service is provided on an “as is” and “as available” basis. ONS does not warrant that the Service will be accurate, reliable, error-free, or uninterrupted, that defects will be corrected, that the Service or any server that makes it available will be free of viruses or harmful components, that the Service will be interoperable with any products or services that ONS does not provide, or that the Service will meet the Customer’s needs or expectations. The Service does not provide medical advice and does not serve as a substitute for independent professional and clinical judgment or individual patient assessment.

8.5. **Beta Products.** Despite anything to the contrary in this Agreement, the Customer acknowledges that: (a) the Customer has the sole discretion whether to use any Beta Products, (b) Beta Products may not be supported and may be changed at any time, including in a manner that reduces functionality, (c) Beta Products may not be available or reliable, and (d) ONS provides Beta Products “as-is” and will have no liability arising out of or in connection with Beta Products.

9. Limitations of Liability

9.1. **Aggregate Liability Cap.** To the fullest extent permitted by law, ONS's aggregate liability to the Customer arising out of or relating to this Agreement will not exceed the amount the Customer has paid for the Service (excluding Courses) in the 12 months preceding the event giving rise to the liability. This limitation will not apply to ONS's obligations under Section 10.2.

9.2. **Excluded Damages.** To the fullest extent permitted by law, ONS will not be liable to the Customer for (a) any indirect, special, incidental, punitive, exemplary, or consequential damages; (b) any loss of use, data, business, or profits, or service interruption, or the cost of substitute services; (c) any malfunction or cessation of internet services by internet service providers or of any of the networks that form the internet which may affect the operation of the Service; and (d) any damages for personal or bodily injury.

9.3. **Clarifications and Disclaimers.** The limitations of liability in Section 9 apply to the benefit of ONS and its officers, directors, employees, agents, and third-party contractors, as well as: (a) to liability for negligence; (b) regardless of the form of action, whether in contract, tort, strict product liability, or otherwise; (c) even if ONS was advised in advance of the possibility of the damages and even if the damages were foreseeable; and (d) even if the Customer's remedies fail of their essential purpose. The Customer acknowledges that ONS has based its pricing on and entered into this Agreement in reliance upon the limitations of liability and disclaimers of warranties and damages in this Section 9 and that such terms form an essential basis of the bargain between the parties. If applicable law limits the application of the provisions of this Section 9, ONS's liability will be limited to the maximum extent permissible.

10. Indemnification

10.1. **By Customer.** The Customer shall defend and indemnify ONS and its Indemnified Associates against Indemnified Liabilities under a Third-Party Claim to the extent arising out of or relating to: (a) the Customer's breach of any representation, warranty, or covenant in this Agreement; (b) the use, misuse, or failure to use the Service by the Customer or a User; and (c) an allegation that Customer Data infringes or misappropriates the Intellectual Property Rights of a third party who is not an Affiliate.

10.2. **By ONS.** ONS shall defend and indemnify the Customer and its Indemnified Associates against Indemnified Liabilities under a Third-Party Claim to the extent arising from an allegation that the Service infringes or misappropriates the Intellectual Property Rights of a third party who is not an Affiliate. If ONS reasonably believes that the Service may infringe or misappropriate, then in addition to ONS's defense and indemnification obligations, ONS may in its discretion and at no cost to the Customer: (a) modify the Service so that it is no longer infringing or misappropriating; (b) obtain a license for the continued use of the Service, or (c) terminate the applicable Order and refund to the Customer any prepaid fees for the remaining Subscription Term.

10.3. **Limitations.** ONS will have no defense and indemnification obligations to the extent the Third-Party Claim arises out of or is based on (a) the Customer's breach of this Agreement; (b) Customer Data; (c) modifications the Customer makes to the Service; (d) Third-Party Products; (e) the Customer's use of an ONS trademark without ONS's express written consent, or (f) the Customer's use of the Service after ONS notifies the Customer to stop due to a Third-Party Claim; or (g) the Customer's redistribution of the Service to, or use for the benefit of, any third party who is not an Affiliate.

10.4. **Process.** Each party must notify the other promptly of a claim under this Section 10. The party seeking protection must: (a) give the other sole control over the defense and settlement of the claim; provided, however, that the indemnified party will have the right, not to be unreasonably withheld or delayed, to reject any settlement or compromise that requires it or an Indemnified Associate admit wrongdoing or liability or subjects either of them to any ongoing affirmative obligations; and (b) give reasonable help in defending the claim. The indemnifying party will: (y) reimburse the other for reasonable out-of-pocket expenses that it incurs in giving that help; and (z) pay the amount of any resulting adverse final judgment or settlement. The parties' respective rights to defense and payment of judgments (or settlement the other consents to) under this Section 10 are in place of any common law or statutory indemnification rights or analogous rights, and each party waives such common law or statutory rights. Section 10 states ONS's sole obligation and the Customer's exclusive remedy with respect to infringement, misappropriation, or violation of a third party's Intellectual Property Rights.

11. General

11.1. **Independent Contractors.** The parties are independent contractors and shall so represent themselves in all regards. Neither party is the agent of the other, and neither may make commitments on the other's behalf.

11.2. **Amendment.** ONS may amend this Agreement from time to time by posting an amended version at its Website and sending the Customer written notice thereof. Such amendment will be deemed accepted and become effective 30 days after such notice (the “**Proposed Amendment Date**”) unless the Customer first gives ONS written notice of rejection of the amendment. In the event of such rejection, this Agreement will continue under its original provisions, and the amendment will become effective at the start of Customer’s next Subscription Period following the Proposed Amendment Date (unless Customer first terminates this Agreement pursuant to Section 3 (Term; Termination)). The Customer’s continued use of the Service following the effective date of an amendment will confirm the Customer’s consent thereto. This Agreement may not be amended in any other way except through a written agreement by authorized representatives of each party. ONS may revise the Privacy Policy at any time by posting a new version of either at the Website, and such new version will become effective on the date it is posted; provided if such amendment materially reduces Customer’s rights or protections, notice and consent will be subject to the requirements in this Section 11.2.

11.3. **Severability.** If any provision in this Agreement is held unenforceable, the rest will remain in full force and effect.

11.4. **Notices.** The parties shall provide all required notices in writing to the addresses set forth herein or an Order (or otherwise designated by a party through a written notice) by nationally recognized overnight courier or hand delivery and will be deemed given upon receipt.

11.5. **Assignment.** The Customer shall not assign or otherwise transfer its rights, in whole or in part, without ONS’s prior written consent, and any attempted assignment or transfer without such consent will be void.

11.6. **Force Majeure.** Excluding the Customer’s payment obligations, neither party’s delay or failure to perform any provision of this Agreement because of circumstances beyond its reasonable control (including, but not limited to, act of God, labor strike or other labor disturbance, war, fire, flood, power surge or failure, internet failure of connectivity, or the act or omission of any third party, or internet failure will be deemed a breach of this Agreement.

11.7. **Government Restricted Rights.** The Service has been developed at private expense and is made available commercially. It is provided under any U.S. government contracts or subcontracts with the most restricted and the most limited rights permitted by law and regulation. Whenever so permitted, the government and any intermediate buyers will obtain only those rights specified in the Agreement. Thus, the Service to the extent provided to any agency of the U.S. Government or U.S. Government contractor or subcontractor at any tier, shall be subject to the maximum restrictions on use as permitted by or FAR 12.212 or DFARS 252.227-7202 or successor regulations.

11.8. **No Third-Party Beneficiaries.** This Agreement does not contemplate any third-party beneficiaries.

11.9. **Governing Law; Dispute Resolution.** Excluding conflicts of law principles, Pennsylvania law governs this Agreement and any disputes arising out of or relating thereto. Neither the Uniform Computer Information Transactions Act as adopted in any jurisdiction nor the United Nations Convention on Contracts for the International Sale of Goods (CISG) will apply to this Agreement. For any claim or dispute arising out of or relating to this Agreement or the Service, the federal and state courts in Allegheny County, Pennsylvania will have exclusive jurisdiction, and the parties hereby waive objections to jurisdiction, venue, and inconvenience of the forum in connection therewith. If a party asserts a claim against the other party to enforce this Agreement and those efforts result in a court judgment, the non-prevailing party will additionally be liable for all costs and expenses, including reasonable attorney’s fees, incurred by the prevailing party to obtain that judgment.

11.10. **No Waiver.** Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement.

11.11. **Entire Agreement.** This Agreement (which incorporates the Documentation and all Orders) is the entire agreement between the parties regarding the subject matter hereof, superseding all prior and contemporaneous agreements, proposals, or representations, written or oral, concerning its subject matter. Any term or condition stated in the Customer’s purchase order or any other of the Customer’s order documentation (excluding Orders) is void. This Agreement is to be interpreted without any inference or rule of construction against the drafting party. If there is a conflict between the documents that make up this Agreement, the documents will control in the following order: the applicable Order, this Agreement, and the Documentation.

12. **Definitions.** The following terms have the following meanings:

12.1. **“Activation Date”** means the date when ONS activates the Service evidenced through an activation email.

- 12.2. **“Affiliate”** means any entity that controls, is controlled by, or is under common control with a party, where “control” means the ability to direct the management and policies of an entity.
- 12.3. **“Beta Products”** means products or features related to the Service available to the Customer on a trial, beta, early access, or similar basis.
- 12.4. **“Confidential Information”** is defined in Section 7.1.
- 12.5. **“Courses”** means ONS’s online courses that are not included in the Service and are purchased separately.
- 12.6. **“Customer Data”** means all information processed or stored through the Service by the Customer or on the Customer’s behalf, but excludes ONS Accounts, payment records, credit cards or other information the Customer uses to pay ONS, or other information and records related to the Customer’s account, including without limitation identifying information related to the Customer staff involved in payment or other management of such account.
- 12.7. **“De-Identified Data”** means Customer Data with the following removed: information that identifies or could reasonably be used to identify the Customer or an individual person.
- 12.8. **“Disclosing Party”** is defined in Section 7.1.
- 12.9. **“Documentation”** means the user guide for the Service as published by ONS.
- 12.10. **“Effective Date”** means the date when the Customer’s initial Order has been executed by both parties.
- 12.11. **“Excluded Data”** means Protected Health Information as that term is defined in The Health Insurance Portability and Accountability Act of 1996, as amended, and the regulations promulgated thereunder (HIPAA).
- 12.12. **“Feedback”** means any suggestion or idea for improving or otherwise modifying any of ONS’s products or services.
- 12.13. **“Indemnified Liabilities”** means: (a) settlement amounts approved by the indemnifying party; (b) damages and costs finally awarded against the indemnified party by a court of competent jurisdiction; and (c) reasonable legal fees actually incurred in connection with the Third-Party Claim.
- 12.14. **“Intellectual Property Rights”** means current and future worldwide rights under patent, copyright, trade secret, trademark, and moral rights laws, and other similar rights.
- 12.15. **“Indemnified Associates”** means an indemnified party and its officers, directors, employees, agents, successors, and assigns.
- 12.16. **“ONS Account”** means an individual’s registered account with ONS.
- 12.17. **“Order”** means an order form through which the Customer may subscribe to the Service.
- 12.18. **“Receiving Party”** is defined in Section 7.1.
- 12.19. **“Representative”** is defined in Section 7.1.
- 12.20. **“Service”** means ONS On-Demand, a web-hosted service for the enterprise delivery of ONS products and services. For purposes of this Agreement, the term “Service” includes Courses and the Documentation unless otherwise indicated.
- 12.21. **“Subscription Period”** means the subscription period for the Service outlined in an Order.
- 12.22. **“Term”** is defined in Section 3.1.
- 12.23. **“Third-Party Claim”** means a claim, demand, action, or proceeding made or brought by a third party who is not an Affiliate.
- 12.24. **“Third-Party Product”** means a web-based or offline software application that is provided by the Customer or a third party and interoperates with the Service.

12.25. “**User**” means any individual who uses the Service on the Customer’s behalf or through the Customer’s account or passwords, whether authorized or not.

12.26. “**Website**” means www.ons.org.

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Last Updated: November 18, 2021