

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 an Order (the “**Customer**”). Capitalized terms have the meanings stated in Section 12.

1. Usage Rights

1.1. **Right to Use.** Subject to this Agreement, Customer may use the Platform and Courses, and copy and use the Documentation, in each case only for Customer’s own business purposes during the Term. These rights are non-transferable and non-sublicensable. The Platform and Courses are licensed, not sold.

1.2. **Users.** Customer may permit Users to use the Platform and/or Courses on its behalf. Customer is responsible for provisioning and managing its User accounts, for its Users’ actions, and their compliance with this Agreement.

1.3. **Courses.** ONS will not make a Course available to Customer until Customer has paid for the Course. A Course will not be available for longer than the time period applicable to the specific course (e.g., 90 or 180 days), after which time access to the Course will expire. Customer is solely responsible for monitoring its usage and assigning Courses. No refunds or credits will be given for Courses, even if unassigned or unused. Courses are subject to ONS’s Educational Integrity Statement and may require Third-Party Products.

1.4. **Service Level Agreement.** ONS’s SLA for the Platform is stated in Appendix 1 attached hereto and incorporated herein.

1.5. **Support.** ONS will use commercially reasonable efforts to provide standard support to Customer during ONS’s standard support hours: 8:30 am to 5:00 pm EST on ONS’s business days.

1.6. **Changes to the Platform.** ONS may modify the Platform at any time, including removing features or functions. If any modification materially reduces the functionality of the Platform, Customer may within 30 days of notice of the modification, and subject to Section 1.3 with respect to Courses, terminate the applicable Order for the Platform and receive a pro-rata refund of fees for the Platform for the unexpired Subscription Period. Customer agrees that it has not relied on the availability of any future functionality of the Platform or any other future product or service in placing any Order.

1.7. **Changes to Courses.** ONS may from time to time modify, redesign, or sunset a Course. If Customer receives a notice from ONS about a modification, redesign, or sunset of a Course, Customer will be given one or more options as applicable with respect to the Course and will have 30 days to select an option and notify ONS at institutions@ons.org; absent a selection from Customer, Customer will receive the modified or redesigned Course, or in the case of a Course that is sunset, Customer will have access to the Course for the period described in the notice. If applicable, ONS will automatically apply any credit to which Customer may be entitled as a result of any modification, redesign, or sunset of a Course, but no refunds will be given.

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

1.9. **Affiliates.** A Customer Affiliate may enter into an Order directly with ONS under this Agreement by a mutually executed Order that references this Agreement. In such event: (a) the Affiliate will be bound by this Agreement and will be fully responsible for its liabilities and obligations under the applicable Order; and (b) all references to “Customer” in the Agreement will be deemed references to the Affiliate set forth on the Order for purposes of defining the rights and obligations of the parties.

1.10. **Beta Products.** Use of Beta Products is permitted only Customer’s internal evaluation during the period designated by ONS on the Order (or if not designated, 30 days). Either party may terminate Customer’s use of a Beta Product at any time for any reason. Beta Products may be inoperable, incomplete, or include features never released. Beta Products are provided “as is,” without warranty, indemnity, service level, or support, and ONS will have no liability arising out of or in connection with Beta Products.

2. Fees

2.1. **Fees.** Customer shall pay fees outlined in an Order. Unless otherwise stated in an Order, all amounts are due within 30 days after the invoice date (the “**Payment Period**”). ONS will not fulfill an Order until all applicable fees have been paid. All fees and expenses are nonrefundable except as expressly stated in this Agreement. Fees are in US dollars. Unless otherwise stated in an Order, fees for the Platform 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 Customer’s payments are due on the dates required under this Agreement. Customer may incur usage, overage, or other additional charges, and ONS will invoice these as incurred. ONS may increase fees for the Platform for any renewal of a Subscription Period. Expiration of any discount or incentive program to

which Customer was previously entitled do not constitute increases. Fees for Courses are made available at ONS's then-current rates published on the Website and are subject to adjustment at any time, with or without notice.

2.2. **Taxes.** Customer is responsible for any applicable sales, use, GST, value-added, withholding or similar taxes or levies, whether domestic or foreign, and interest and penalties thereon, other than ONS's income tax. Fees and expenses are exclusive of taxes. ONS will invoice Customer for sales tax when required to do so and Customer will pay the tax unless Customer provides ONS with a valid tax exemption certificate.

2.3. **Disputed Billing.** If Customer wishes to dispute an invoice, Customer shall notify ONS within the Payment Period and the parties will seek to resolve the dispute over a 15-day discussion period. Customer is not required to pay any amounts during the discussion period if Customer has disputed the amount in good faith and is cooperating diligently to resolve the dispute, but Customer will timely pay all undisputed amounts. After the discussion period, either party may pursue any available remedies.

2.4. **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.

2.5. **Billing Information.** If Customer provides ONS with credit card information for payment, Customer acknowledges that an invoice may not be sent and Customer authorizes ONS to charge the credit card the fees stated in the Order (including any renewals). If Customer requires the use of a purchase order or purchase order number, 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. 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 as provided herein, continues until the end of the Subscription Period.

3.2. **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 of non-renewal at least 30 days prior to the expiration of the then-current Subscription Period. Customer may add additional subscriptions during the Subscription Period, prorated for the remainder of the then-current Subscription Period. Customer may reduce subscriptions for convenience by providing 30 days' prior written notice to ONS, but no refunds or credits will be given.

3.3. **Termination.** Either party may terminate this Agreement (including any Subscription Period) if: (a) the other party has materially breached 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. If Customer has no active subscriptions, ONS may terminate this Agreement.

3.4. **Suspension.** ONS may suspend access to the Platform or a Course due to a Suspension Event, but where practical will give Customer prior notice so that Customer may seek to resolve the issue and avoid suspension. ONS is not required to give prior notice in exigent circumstances or for a suspension made to avoid material harm or violation of law. Once the Suspension Event is resolved, ONS will promptly restore access in accordance with this Agreement. "**Suspension Event**" means: (a) Customer's account is 30 days or more overdue; (b) Customer is in breach of Section 5 (Usage Rules); or (c) Customer's use of the Platform or a Course risks material harm to the Platform, a Course, or others.

3.5. **Effect of Termination.** Upon termination of this Agreement: (a) the Subscription Period will terminate; (b) Customer shall pay in full within 30 days all amounts owed to ONS; (c) Customer's rights to use the Platform and Courses will cease, and Customer shall discontinue use of the Platform and Courses; (d) Customer will not be able to assign any unassigned Courses and will not receive a refund or credit for unassigned Courses; and (e) upon ONS's request within 45 days certify to ONS in writing Customer's compliance with this Section 3.4. 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 (Usage Rules), Section 6 (Intellectual Property), Section 7 (Confidentiality), Section 8 (Warranties; Disclaimer), Section 9 (Limitations of Liability), Section 10 (Indemnification), Section 11 (General), and Section 12 (Definitions).

3.6. **Data Export; Deletion.** Upon 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 Customer for export or download. After those 30 days, ONS will have no obligation to maintain or provide Customer Data and will delete or destroy all copies of Customer Data in ONS's systems or otherwise in ONS's possession or control. Nonetheless, ONS may retain Customer Data or Confidential Information with its standard backup or record retention policies, as required by law, or as necessary to maintain an ONS Account, subject to Section 4.3 (Security and Privacy) and Section 7 (Confidentiality).

4. Customer Data

4.1. **Customer Data.** Customer has sole responsibility for the accuracy, integrity, legality, reliability, and appropriateness of Customer Data. Customer has secured and will maintain all rights, permissions, and consents and comply with any laws necessary to allow the operation of the Platform and Courses and to permit ONS to process, store, and transfer Customer Data.

4.2. **Use of Customer Data.** ONS shall not: (a) access or use Customer Data other than as necessary to provide or maintain the Platform, Courses, or an ONS Account; or (b) give Customer Data access to any third party, except with respect to an ONS Account or ONS's subcontractors that have a need for such access to facilitate the Platform and Courses and are subject to a reasonable written agreement governing the use and security of Customer Data.

4.3. **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. If Customer is not located in the United States, Customer agrees that ONS and its service providers may transfer, store, and process Customer Data in locations other than Customer's country.

4.4. **Risk of Exposure.** Customer recognizes and agrees that hosting data online involves risks of unauthorized disclosure or exposure and 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.

4.5. **Privacy Policy.** Customer acknowledges ONS's privacy policy at the Website and Customer recognizes and agrees that nothing in this Agreement restricts ONS's rights to alter such privacy policy or with respect to ONS Accounts.

4.6. **Usage Data.** ONS may collect and use Usage Data to operate, improve, and support its products or services and for any lawful business purposes, including benchmarking and reports, but ONS will not disclose Usage Data externally unless it is: (a) deidentified and does not identify Customer; and (b) it is aggregate with data across other customers.

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

4.8. **Required Disclosure.** ONS may disclose Customer Data as required by applicable law or by proper legal or governmental authority. If permitted by law, ONS will give Customer prompt notice of any such legal or governmental demand and reasonably cooperate with Customer in any effort to seek a protective order or otherwise to contest such required disclosure, at Customer's expense.

4.9. **Excluded Data.** 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. Customer shall inform ONS of any Excluded Data within Customer Data promptly after discovery (without limiting ONS's rights or remedies). 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. Usage Rules

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

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

5.3. **Cooperation.** 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.

5.4. **Restrictions.** Customer will not and will not permit anyone else to: (a) sell, sublicense, distribute or rent the Platform or a Course (in whole or part), grant non-Users access to the Platform or a Course or use the Platform or a Course to provide a hosted or managed service to others, or share Platform subscriptions, Courses, or use the Platform or Courses in circumvention of any quantity or other limits stated in an Order; (b) reverse engineer, decompile or seek to access the source code of the Platform or a Course, except to the extent these restrictions are prohibited by applicable law and then only upon advance notice to ONS; (c) copy, modify, create derivative works of or remove proprietary notices from the Platform or a Course; (d) conduct security or vulnerability tests of the Platform or a Course, interfere with its operation or circumvent its access restrictions; (e) use the Platform or a Course to develop a competitive product or service; and (f) use the Platform or Courses 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 viruses, security vulnerabilities, worms, Trojan horses or other harmful or malicious computer code, files, scripts, agents or programs.

5.5. **Third-Party Products.** The Platform and/or Courses may require, or Customer may choose to enable integrations or exchange Customer Data with, Third-Party Products. In such cases: (a) Customer's use of a Third-Party Product is governed by its agreement with the relevant provider, not this Agreement, and Customer shall comply with the terms and conditions of that agreement; (b) ONS is not responsible for Third-Party Products or how their providers use Customer Data; (c) ONS does not warrant interoperability with any Third-Party Product; and (d) if the provider of a Third-Party Product ceases to make the Third-Party Product reasonably available for interoperation, ONS may cease providing the Platform or Course features without entitling Customer to any refund, credit, or other compensation as a result of the loss or degradation of interoperability.

6. Intellectual Property

6.1. **Reserved Rights.** Except for Customer's express rights in this Agreement, as between the parties, ONS and its licensors retain all intellectual property and other rights in the Platform, Courses, and Documentation. Other trademarks or logos used in the Platform or Courses are the trademarks or logos of their respective owners, which ONS uses with permission of the owner for identification purposes only.

6.2. **Feedback.** If Customer gives ONS feedback regarding improvement or operation of the Platform or Courses, ONS may use the feedback without restriction or obligation. All feedback is provided "as is" and ONS will not publicly identify Customer as the source of feedback without Customer's permission.

6.3. **Customer Marketing.** Unless otherwise stated in an Order, Customer: (a) agrees to participate in a case study featuring Customer's use of the Platform or Courses; (b) will provide quotes and other materials to ONS for the case study; (c) grants ONS the right to use the provided materials and 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, and (d) 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.

7. Confidentiality

7.1. **Protection of Confidential Information.** As recipient, each party will: (a) use Confidential Information only to fulfil its obligations and exercise its rights under this Agreement; (b) not disclose Confidential Information to third parties without the discloser's prior approval, except as permitted by this Agreement; and (c) subject to Section 4.4, protect Confidential Information using at least the same precautions recipient uses for its own similar information and no less than a reasonable standard of care.

7.2. **Permitted Disclosures.** The recipient may disclose Confidential Information to its employees, agents, contractors, and other representatives having a legitimate need to know (including, for ONS, subcontractors referenced in Section 11.3), provided recipient remains responsible for their compliance with this Section 7 and are bound to confidentiality obligations no less protective than this Section 7.

7.3. **Exclusions.** These confidentiality obligations do not apply to information that the recipient can document: (a) is or becomes public knowledge through no fault of the recipient; (b) it rightfully knew or possessed, without confidentiality restrictions, prior to receipt for the discloser; (c) it rightfully received from a third party without confidentiality restrictions; or (d) it independently developed without using Confidential Information.

7.4. **Remedies.** Breach of this Section 7 may cause substantial harm for which monetary damages are an insufficient remedy. Upon a breach of this Section 7, the discloser is entitled to seek appropriate equitable relief, including an injunction, in addition to other remedies.

7.5. **Required Disclosure.** The recipient may disclose Confidential Information to the extent required by law. If permitted by law, the recipient will give the discloser reasonable advance notice and reasonably cooperate, at the discloser's expense, to obtain confidential treatment for the Confidential Information.

8. Warranties; Disclaimers

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; and (b) it has the legal power and authority to enter into this Agreement.

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

8.3. **Warranty Remedy.** ONS will use reasonable efforts to correct a verified breach of the limited warranty in Section 8.2 reported by Customer. If ONS fails to do so within 30 days after Customer's warranty report, then either party may terminate the applicable Order, in which case ONS will refund to Customer any pre-paid, unused fees for the Platform for the terminated portion of the Subscription Period. To receive these remedies, Customer must report a breach of warranty in reasonable detail within 30 days after discovering the issue. These procedures are Customer's exclusive remedies and ONS's sole liability for breach of the limited warranty. ONS will not be obligated to remedy any breach of warranty to the extent the breach was caused by: (a) Customer's failure to comply with this Agreement or the Documentation; (b) Customer's acts or omissions; (c) Customer's modification to the Platform or Courses that ONS did not approve; (d) a Third-Party Product; (e) Customer's combination of the Platform or Courses 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. **Disclaimers.** Except as expressly stated in this Agreement, ONS disclaims and does not make any warranty, whether express, implied, or statutory, including but not limited to any warranty of merchantability fitness for a particular purpose, title, noninfringement, accuracy, quality, reliability, correctness, completeness, comprehensiveness, timeliness, currency, suitability, availability, compatibility, or otherwise (regardless of any course of dealing, custom or trade usage). The Platform, Documentation, and Courses do not provide medical advice and do not serve as a substitute for independent professional and clinical judgment or individual patient assessment. These disclaimers apply to the fullest extent permitted by law.

9. Limitations of Liability

9.1. **Aggregate Liability Cap.** Except for express obligations under Section 10, to the fullest extent permitted by law, ONS's aggregate liability to Customer will not exceed the amount Customer has paid for the Platform in the 12 months preceding the event giving rise to the liability.

9.2. **Excluded Damages.** Except for express obligations under Section 10, to the fullest extent permitted by law, ONS will not be liable for: (a) any indirect, special, incidental, punitive, statutory, 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 Platform or Course; 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 Customer's remedies fail of their essential purpose. In no event will the limitations of liability be applied to limit ONS's right to collect fees due under this Agreement. 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.** 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) Customer's breach of any representation, warranty, or covenant in this Agreement; (b) the use, misuse, or failure to use the Platform or a Course by Customer or a User; (c) injury or death of any individual, or any loss or damage to real or tangible personal property, caused by the act or omission of Customer or any of its agents, subcontractors, employees, or Users.

10.2. **By ONS.** ONS shall defend and indemnify Customer and its Indemnified Associates against Indemnified Liabilities under a Third-Party Claim alleging that the Platform directly infringes any U.S. copyright or misappropriates any trade secret recognized under U.S. law. If ONS reasonably believes that the Platform may infringe or misappropriate, ONS may in its discretion and at no cost to Customer: (a) modify the Platform so that it is no longer infringing or misappropriating; (b) obtain a license for the continued use of the Platform; or (c) terminate the applicable Order and refund to Customer any prepaid fees for the Platform for the remaining Subscription Period.

10.3. **Limitations.** ONS will have no defense and indemnification obligations for Indemnified Liabilities under a Third-Party Claim in excess of five times the amount of fees paid by the Customer for the Platform and/or to the extent a Third-Party Claim arises out of or is based on: (a) Customer's breach of this Agreement; (b) a Course; (c) Customer Data; (d) modifications Customer makes to the Platform; (e) Third-Party Products; (f) Customer's use of the Platform after ONS notifies Customer to stop due to a Third-Party Claim; or (g) Customer's redistribution of the Platform to, or use for the benefit of, any third party who is not an Affiliate. ONS's obligations under 10.2 are in lieu of any common law or statutory indemnification rights or analogous rights and Customer hereby waives such common law or statutory rights.

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 Customer's exclusive remedy with respect to infringement, misappropriation, or violation of a third party's intellectual property rights.

11. General

11.1. **Authorization.** The persons executing an Order for and on behalf of each of the parties each represent that they have the requisite authority to bind the respective entities on whose behalf they are signing.

11.2. **Operational Changes.** ONS may modify the SLA and/or its support policy to reflect new features or changing practices, but the modifications may not be retroactive or materially decrease ONS's overall obligations during a Subscription Period.

11.3. **Subcontractors.** ONS may use subcontractors and permit them to exercise its rights and fulfill its obligations, but ONS remains responsible for their compliance with this Agreement and for its overall performance under this Agreement.

11.4. **Agreement Compliance.** ONS or its professional representatives may review Customer's compliance with the Agreement throughout the Term. If the review reveals that Customer has exceeded the authorized use, quantity, or scope permitted by the Agreement or an Order, Customer shall pay all unpaid or underpaid fees. Without limiting the generality of the foregoing, if Customer assigns more Courses to more unique Users than those permitted for Customer's then-current subscription tier or other classification as identified in an Order, Customer will be moved to the applicable tier or classification and will pay the applicable overage fees pro-rata portion (calculated based on the time remaining in the then-current Subscription Period) of fees for the applicable tier or classification or such other amount as is specified in the Order, and any applicable discounts or incentives will be adjusted. ONS will not fulfill an Order for Courses until any unpaid or underpaid fees have been paid.

11.5. **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.

11.6. **Amendment.** ONS may amend this Agreement from time to time by posting an amended version at its Website and sending Customer notice thereof, including through an Order. Such amendment will be deemed accepted and become effective on the earlier of an Order executed by Customer after ONS's notice of the amendment or 30 days after such notice (the "**Proposed Amendment Date**") unless 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)). Customer's continued use of the Platform or Course or execution of an Order following the effective date of an amendment will confirm 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.

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

11.8. **Notices.** Any notice or other communication required or permitted to be given by either party under this Agreement shall be in writing and shall be deemed given as of: (a) the date delivered if delivered by hand, or reputable courier service; (b) the date sent if sent by email (with transmission confirmed) and which if sent to ONS includes a copy to institutions@ons.org and contracts@ons.org; (c) the second business day (at the place of delivery) after deposit with an internationally recognized overnight delivery service, or (d) the fifth business day after mailing if mailed by registered or certified mail, postage prepaid and return receipt requested, addressed to the other party at the addresses stated herein or in an Order (or otherwise designated by a party through written notice). This Section 11.8 is not intended to govern the day-to-day business communications necessary between the parties in performing their obligations under the terms of this Agreement.

11.9. **Assignment.** Neither party may assign its rights or obligations under the Agreement without the other party's prior written consent. Notwithstanding the foregoing, either party may assign its rights and obligations under the Agreement to an Affiliate as part of a reorganization, or to a purchaser of its business entity or substantially all of its assets or business to which rights and obligations pertain without the other party's consent, provided that: (a) the purchaser is not insolvent or otherwise unable to pay its debts as they become due; (b) the purchaser is not a competitor of the other party; and (c) any assignee is bound hereby. Other than the foregoing, any attempt by either party to transfer its rights or obligations under the Agreement will be void.

11.10. **Force Majeure.** Excluding 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.

11.11. **Export.** Each party: (a) will comply with all export and import laws in performing this Agreement; and (b) represents and warrants that it is not listed on any U.S. government list of prohibited or restricted parties or located in (or a national of) a country subject to a U.S. government

embargo or designated by the U.S. government as a “terrorist supporting” country. Customer will not submit to Platform any data controlled under the U.S. International Traffic in Arms Regulations.

11.12. **Status.** Customer represents and warrants that it is not a prime contractor performing a U.S. federal government contract, and it currently does not have any contracts with any other companies that provide products or services to a U.S. federal government prime contractor.

11.13. **Government Rights.** To the extent applicable, the Platform and Courses are “commercial computer software” or a “commercial item” for purposes of FAR 12.212 for and DFARS 227.7202. Use, reproduction, release, modification, disclosure or transfer thereof is governed solely by the terms of this Agreement, and all other use is prohibited.

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

11.15. **Governing Law.** 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.

11.16. **Dispute Resolution.** For any claim or dispute arising out of or relating to this Agreement or the Platform or a Course, 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. Notwithstanding the foregoing, ONS may at any time seek and obtain appropriate legal or equitable relief in any court of competent jurisdiction for claims regarding its intellectual property rights. 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.

11.17. **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.

11.18. **Order of Precedence.** If there is a conflict between the documents that make up this Agreement, the documents will control in the following order: this Agreement, the applicable Order, the Documentation, and any addenda attached to an Order. All Orders and addenda are subject to this Agreement. An Order or addenda may not modify any part of this Agreement unless it specifically identifies the provisions that it supersedes.

11.19. **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. The Agreement will prevail over terms and conditions of any Customer-issued purchase order or other ordering documents, which will have no force and effect, even if ONS accepts or does not otherwise reject the purchase order or other ordering document. This Agreement and Orders cannot be modified by printed or handwritten additions, changes, redlines or blacklines, or strikethroughs. This Agreement is to be interpreted without any inference or rule of construction against the drafting party.

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

12.1. **“Activation Date”** means the date when ONS activates the Platform 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 available to Customer on a trial, beta, early access, or similar basis.

12.4. **“Confidential Information”** means: (a) information disclosed by or on behalf of a party (as discloser) to the other party (as recipient) under this Agreement, in any form, that: (a) discloser identifies to recipient as confidential or proprietary; or (b) should be reasonably understood as confidential or proprietary due to its nature and circumstances of its disclosure. ONS’s Confidential Information includes technical or performance information about the Platform or Courses, security policies and processes, product roadmaps, and pricing, and ONS Accounts. Customer’s Confidential Information includes Customer Data.

12.5. **“Courses”** means ONS’s online courses.

12.6. **“Customer Data”** means information Customer provides to, or receives from, the Platform, but excludes ONS Accounts and any underlying information therein from which Customer Data may be derived.

12.7. **“Documentation”** means the user guide for the Platform as published by ONS.

12.8. **“Educational Integrity Statement”** means the educational integrity statement on the Website as may be updated from time to time.

12.9. **“Effective Date”** means the date when Customer’s initial Order has been executed by both parties.

12.10. **“Excluded Data”** means social security numbers and 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).

12.11. **“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 before the Indemnifying Party assumes the defense of the Third-Party Claim (but excluding any fees incurred thereafter).

12.12. **“Indemnified Associates”** means an indemnified party and its officers, directors, employees, agents, successors, and permitted assigns.

12.13. **“ONS Account”** means an individual’s registered account with ONS and information contained therein.

12.14. **“Order”** means an order form issued by ONS through which Customer may subscribe to the Platform.

12.15. **“Platform”** means ONS On-Demand, a web-hosted platform for the enterprise delivery of ONS products and services.

12.16. **“SLA”** is defined in Section 1.4.

12.17. **“Subscription Period”** means the subscription period for the Platform outlined in an Order.

12.18. **“Term”** is defined in Section 3.1.

12.19. **“Third-Party Claim”** means a claim, demand, action, or proceeding made or brought by a third party who is not an Affiliate.

12.20. **“Third-Party Product”** means any product or service not provided by ONS that Customer uses with the Platform or a Course.

12.21. **“Usage Data”** means data, information, or insights generated or derived from the use of the Platform, Courses, Customer Data, or ONS Accounts.

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

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

* * *

Last Updated: August 5, 2022

Appendix 1

This Service Level Agreement (“SLA”) of ONS is made part of the Agreement between ONS and Customer for the use of ONS On-Demand (the “Platform”) to which Customer has subscribed to in an Order with ONS. Any term not otherwise defined herein has the meaning stated in the Agreement. In the event of any inconsistency or conflict between the Agreement and this SLA, the terms of this SLA control. The terms of this SLA are limited to the scope of this SLA and apply to the Platform, not Courses.

1. ONS will use commercially reasonable efforts to ensure that the Platform is available 99.5% monthly to 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 Platform; (c) during any valid suspension of the Platform pursuant to the Agreement; and (d) downtime caused by force majeure events, Customer’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.
2. ONS will not be liable if for any reason all or any part of the Platform is unavailable at any time or for any reason. ONS contracts with third-party service providers to provide underlying support for the Platform, and all bandwidth and performance levels and downtime for Platform are subject to the terms of any applicable service level agreement between ONS and the third-party service providers.
3. Availability will be calculated based on the total minutes in the applicable calendar month minus the minutes of unavailability; provided that unavailability of less than 60 minutes in a month does not count for such purposes, in the aggregate or otherwise. Unavailability is calculated from the time when Customer notifies ONS in accordance with this SLA. ONS’s monitoring and logging infrastructure is the source of truth for determining availability.
4. If the Platform is not available accordance with this SLA, and provided Customer’s account is fully paid up and there are no outstanding payment issues or disputes and Customer is not in breach of the Agreement, then as Customer’s sole remedy, the Subscription Period will be extended further for such time during which Customer was not able to use the Platform, such time not to exceed 3 months (in which case either party may terminate the Agreement).
5. As a condition to Customer’s eligibility for a remedy under this SLA, Customer must notify ONS at institutions@ons.org within 30 days immediately following the month in which availability fell below 99.5%.

* * *