

## **Subscription Agreement**

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- a) In consideration of OX's performance of its obligations pursuant to this Agreement, Subscriber shall pay OX the maintenance subscription fees set forth in OX online e-commerce platform or through invoice generated by Open-Xchange or an authorized reseller.
- b) If permitted under applicable law Subscriber shall pay all taxes based on or in any way measured by this Agreement or any related services (e.g. sales taxes, value added taxes), excluding taxes based on OX's net income, and if Subscriber challenges the applicability of any such taxes, it shall pay the same to OX and Subscriber may thereafter challenge such tax and seek refund thereof
- c) The annual maintenance subscription fees and taxes shall be due and payable within ten days after the Effective Date as evidenced by the submission of an invoice by OX or one of its authorized resellers unless such fees have already been paid online through the OX e-commerce platform. Subscriber shall pay a late payment charge of 1.5 percent per month, or maximum rate permitted by applicable law, whichever is less, on any unpaid amounts for each calendar month or fraction thereof that any payment to OX is in arrears.

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(9) **Limitation of liability.**

a) EXCEPT FOR LIABILITY FOR PERSONAL INJURY, IF ANY, OX SHALL NOT BE LIABLE TO THE SUBSCRIBER FOR ANY DAMAGES RESULTING FROM OR RELATED TO ANY SERVICES PERFORMED BY OX HEREUNDER, INCLUDING, BUT NOT LIMITED TO, ANY LOSS OF DATA OR SOFTWARE, INABILITY OF OX TO CORRECT ANY ERRORS, MALFUNCTIONS AND DEFECTS IN THE SOFTWARE OR DELAY OF OX IN PERFORMING ANY SERVICES HERUNDER.

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(10) **Termination/ cancellation**

a) This Agreement may be terminated/ cancelled upon the occurrence of one or more of the following events; provided, however, that the terminating/ cancelling party shall have no liability to the other party for exercise of any rights granted in this paragraph, nor shall such exercise have the effect of waiving any rights, claims, or damages to which the terminating/ cancelling party might be entitled:

i. By OX, if Subscriber fails to pay the maintenance subscription fees or taxes due to OX hereunder, provided written notice of such alleged default has been given to Subscriber and Subscriber has not cured such default within ten (10) days after receipt of such notice.

ii. By either party, if the other party is in default of any other provision of this Agreement, provided written notice of such alleged default has been given to the other party and such party has not cured such default within fourteen (14) days after receipt of such notice.

b) The failure of either party to exercise its rights of termination/ cancellation as provided herein shall not be deemed a waiver or limitation of the rights of such party to subsequently terminate/ cancel this Agreement for any other or similar default.

c) In the event of any termination/ cancellation, OX may require, that Subscriber cease any further use of the Licensed Product or any portion thereof and immediately destroy all copies of

the Licensed Product and erase the Licensed Product from any temporary RAM and permanent memory. Upon OX's request, an authorized representative of Subscriber shall provide a written certification that warrants compliance with this Paragraph 10(c).

**(11) Term**

- a) This Agreement shall become effective upon the parties by the acceptance of this Agreement by the Subscriber.
- b) The term of this Agreement shall be for a period of one (1) year commencing with the Effective Date.

**(12) General**

- a) Any claim arising out of or related to this Agreement must be brought no later than one (1) year after it has accrued.
- b) This Agreement is the sole agreement between the parties relating to the subject matter and supersedes all prior understandings, writings, proposals, representations, or communications, written or oral, of either party. Only a writing executed by the authorized representatives of both parties may amend this Agreement.
- c) This Agreement may not be transferred or assigned by Subscriber without the prior written consent of OX.
- d) Should any part of this Agreement be held invalid or unenforceable, that portion will be construed consistent with applicable law as nearly as possible to reflect the original intention of the parties and all other portions of this Agreement remain in full force and effect. In the event of any termination or cancellation of this Agreement, provisions that are intended to continue and survive shall do so.
- e) Failure of either party to enforce any provision of this Agreement will not be deemed a waiver of the provision or the right to enforce that provision.
- f) This Agreement shall be interpreted in accordance with the substantive law of the State of Delaware. The application of the Uniform Law on the International Sale of Goods and the Uniform Law on the Formation of Contracts for the International Sale of Goods - both dated July 17, 1973 - and of the UN agreement on the sale of goods of April 11, 1980 shall be excluded. In action arising out of or relating to this Agreement, both parties consent to the nonexclusive jurisdiction of the federal and state courts located in the County of New Castle, Delaware. The prevailing party of any dispute shall recover its reasonable attorneys' fees and costs incurred in litigating, arbitrating, or otherwise settling or resolving such dispute.
- g) During the Agreement's term, Subscriber agrees to regularly back-up its computer data onto a separate media. Subscriber acknowledges that any failure to do so may significantly decrease its ability to mitigate any harm or damage arising from any problem or error in the Licensed Product or the provision of Services under this Agreement.

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Tarrytown, New York, December 2005

## ANNEX A

### (Subscription Agreement)

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