

# OSIsoft Cloud Services ("OCS") Agreement

Last updated: November 2020

This OSIsoft Cloud Services ("OCS") Agreement is between you or the entity you represent, or, if no such entity is designated by you in connection with a Subscription purchase or renewal, you individually ("you") and OSIsoft, LLC ("OSIsoft", "we", "us", or "our") and consists of the below terms and conditions and the Quote for your Subscription, or renewal (together, the "Agreement"). It is effective for the term of your Subscription 1) on the date we provide you with confirmation of your Subscription; or 2) the date on which your Subscription is renewed as applicable. Key terms are defined below.

## Definitions.

"Affiliate" means any legal entity that a party owns, that owns a party, or that is under common ownership with a party. "Ownership" means, for purposes of this definition, control of more than a 50% interest in an entity.

"API" is the application-programming interface used by you or internally by OCS services to access functionality provided by the Offering.

"Consumption Offering", "Commitment Offering", or "Limited Offering" describe categories of Subscription offers and are defined in Section 3.

"Customer Data" means all data, including all text, sound, software, or image files that are provided to us by, or on behalf of, you, your Affiliates, or your End Users through your use of the Offering.

"Customer Solution" means any application you run in connection with the Offering.

Any reference in this Agreement to "day" will be a calendar day.

"End User" means any user of a Customer Solution, or any person permitted by you to access Customer Data hosted in Offering or otherwise use the Offering.

"Non-OSIsoft Product" means any software, data, service, website or other product licensed, sold or otherwise provided to you by an entity other than us, whether you obtained it via our Offering or elsewhere.

"Quote" means the pricing and related information applicable to a Subscription offer, as presented to you in a Portal or alternate method of correspondence.

"Authorized Representatives" means your employees, Contractors, or Affiliates who are authorized to access the Offering in connection with your business operations.

"Portal" means the online portal from which you access an offering (cloud.osisoft.com) or support for that offering (customers.osisoft.com) or at an alternate site that we identify.

"Previews" means preview, beta, or other pre-release versions of the Offering or Software offered by OSIsoft to obtain customer feedback.

"Privacy Statement" means the OSIsoft Cloud Services Privacy Statement, published at <https://www.osisoft.com/terms-and-conditions/>, or at an alternate site that we identify.

"Offering" means one or more of the OSIsoft Cloud services or features made available to you under this Agreement by OSIsoft and identified on the Portal.

“Sensitive Personal Information” means any of the following: (i) credit, debit or other payment card data subject to the Payment Card Industry Data Security Standards (“PCI DSS”); or (ii) patient, medical or other protected health information regulated by the Health Insurance Portability and Accountability Act (“HIPAA”).

“SLAs” is our Service Level Agreements and means the commitments we make regarding delivery or performance of the Offering, as published in the applicable Quote, accompanying documentation, or at an alternate site that we identify.

“Software” means OSIssoft software we provide to you as part of the Offering for use with the Offering.

“Subscription” means an enrollment for Offering for a defined Term as specified on the Portal. You may purchase multiple Subscriptions, which may be administered separately, and which will be governed by the terms of a separate OSIssoft agreement.

“Term” means the duration of a Subscription (for example, three (3) or twelve (12) months).

“Third-Party Platform” means any software, software-as-a-service, data infrastructure or other products or services not provided by us that is integrated with or otherwise connected to the Offering.

“We” and “us” means OSIssoft, LLC and its Affiliates, as appropriate.

“You” and “your” means the entity entering into this Agreement to use the Offering.

## 1. Use of the Offering.

a. Rights Granted. We grant you the right to access and use the Offering and to access, configure and use the Offering included with your Subscription, as further described in this Agreement.

b. Reservation of Rights. We reserve all rights that have not been expressly granted in this Agreement.

c. Authorized Users. Use of and access to the Offering in connection with your business operations is permitted by your Authorized Users. You will be responsible for their use of the Offering in accordance with this Agreement.

d. Customer Solutions. In addition to using the Offering in connection with your own business operations, you may also create and maintain a Customer Solution, which you may permit third party End Users to access and use the Offering, provided that the Customer Solution adds material functionality to the Offering and is not primarily a substitute for the Offering. We do not guarantee that our Software will maintain integrations with any Customer Solution, however if we do discontinue a service or feature we will make reasonable efforts to announce such discontinuation through the Portal.

e. End Users. You control access by End Users, and you are responsible for their use of the Offering in accordance with this Agreement. For example, you will ensure End Users comply with the Acceptable Use section below. You agree to be jointly and severally liable for any actions of you and/or your End Users related to their use of the Offering.

f. Third Party Platform Integrations. If applicable, the Offering may currently (or on a future date) support integrations with certain Third-Party Platforms. You are solely responsible for complying with any relevant terms and conditions of the Third-Party Platforms and for maintaining appropriate accounts in good standing with the providers of the Third-Party Platforms. You acknowledge and agree that to the extent we interact with any Third-Party Platform in accordance with the purposes described in this

Agreement, We have no responsibility or liability for any Third-Party Platform or any Customer Data exported to, accessed or used by a Third-Party Platform. We do not guarantee that the Offering will maintain integrations with any Third-Party Platform, however if we do disable a service or feature that impacts an integration with at Third-Party Platform we will make reasonable efforts to announce such discontinuation through the Portal.

g. Distributed Third Party Software Products. We may distribute software products to you that are subject to a license by third parties. These products are not subject to any agreement you may have with us. In addition, our software may contain third party software components. These components and the associated third-party agreements are listed at [www.OSIsoft.com](http://www.OSIsoft.com). By using these software components, you are bound by the associated licensing agreements and agree to their terms and conditions.

h. Acceptable Use. You may use the Offering only in accordance with this Agreement. In connection with use of the Offering, neither you nor those that access the Offering through you may:

- i. reverse engineer, decompile, disassemble, or work around technical limitations in the Offering, except to the extent that applicable law permits it despite these limitations;
- ii. copy or create a derivative of the Offering;
- iii. disable, tamper with, or otherwise attempt to circumvent any usage tracking mechanism that meters your use of the Offering;
- iv. rent, lease, lend, resell, transfer, or sublicense the Offering or any portion thereof to or for third parties, except as permitted by this Agreement or another agreement executed by both Parties;
- v. remove or obscure proprietary notices;
- vi. violate any law, regulation, governmental order or decree;
- vii. violate the rights of others;
- viii. try to gain unauthorized access to or disrupt any service, data, account or network by any means;
- ix. falsify any protocol or email header information (e.g., spoofing”);
- viii. spam or distribute malware;
- x. harm the Offering or impair anyone else’s use of them;
- xi. or for any high-risk use (where failure or fault of the Offering could lead to death or serious bodily injury of any person, or to severe property or environmental damage).

i. Customer Data. You are solely responsible for the accuracy, content, and legality of all data of any type that is submitted to or through the Offering by you, your Authorized Representatives, and End Users (“Customer Data”). You will secure and maintain all notices, consents, and rights in Customer Data necessary for us to provide the Offering to you without violating the rights of any third party or otherwise obligating OSIsoft to you or to any third party. OSIsoft does not and will not assume any obligations with respect to Customer Data or to your or your Authorized Representatives’ use of the Offering other than as expressly set forth in this Agreement or as required by applicable law.

j. Responsibility for Your Accounts. You are also responsible for maintaining the confidentiality of any non-public authentication credentials associated with your or your Authorized Representatives’ use of the

Offering. You must promptly notify our customer support team about any possible misuse of your accounts or authentication credentials or any security incident related to the Offering.

k. Updates. We may make changes to the Offering from time to time. We will provide you with notice prior to any renewal of your subscription before removing any core functionality (excluding Previews), unless security, legal, or system performance considerations require an expedited removal.

l. Preview Releases. We may make available Previews. PREVIEWS ARE PROVIDED "AS-IS," "WITH ALL FAULTS," AND "AS AVAILABLE," AND ARE EXCLUDED FROM THE SLAS AND LIMITED WARRANTY. Previews may not be covered by customer support. Previews may be subject to reduced or different security, compliance, and privacy commitments. We may change or discontinue Previews at any time without notice. We also may choose not to release a Preview into "General Availability."

## 2. Security, Privacy and Data Protection.

a. OSISOFT Security. We maintain appropriate technical and organizational measures, internal controls, and data security routines intended to protect Customer Data against accidental loss or change, unauthorized disclosure or access, or unlawful destruction. Additional information about security can be found at the OCS Trust Center website currently available at the following URL link: <https://cloud.osisoft.com/trust-center>. You are wholly responsible for configuring your Customer Solution to ensure adequate security, protection, and backup of Customer Data. We will have no responsibility for unauthorized third-party access beyond our control.

b. Microsoft Azure. Our services are currently deployed in certain Microsoft Azure regions. More information about the Security of Microsoft data centers' infrastructure can be found at their Trust Center website currently available at the following URL link: <https://www.microsoft.com/en-us/security>.

c. Privacy and Data Location. We treat Customer Data in accordance with our Privacy Statement. Subject to any restrictions set forth in the Privacy Statement, we may transfer to, store, or process Customer Data in any country where we or our Affiliates or subcontractors have facilities that provide or support the Offering. We are a data processor (or sub-processor) acting on your behalf, and you appoint us to do these things with Customer Data in order to provide the Offering to you. You agree not to use the Offering to intentionally collect, store, process or transmit any Sensitive Personal Information. You acknowledge we are not a Business Associate or subcontractor (as those terms are defined in HIPAA) or a payment card processor and that the Offering is neither HIPAA nor PCI DSS compliant.

d. Third Party Data. You will obtain any necessary consent from End Users or others whose personal information or other data you will access, publish, share, store, reproduce or host using the Offering. For clarity, you will be solely responsible for obtaining the necessary clearances, consents and approvals from any applicable party under all applicable Laws. You expressly acknowledge and agree that OSISOFT is not responsible for managing the relationship and the scope of Customer Data being shared between Parties using our Offerings.

e. Ownership of Customer Data. Except for Offerings provided to you, as between the parties, you retain all right, title, and interest in and to Customer Data. We acquire no rights in Customer Data, other than the right to host Customer Data within the Offering, including the right to use and reproduce Customer Data solely as necessary to provide the Offering.

f. Third-party Requests. We will not disclose Customer Data to a third party (including law enforcement, other government entity, or civil litigant; excluding our subcontractors) except as you direct or unless

required by law. Should a third party contact us with a demand for Customer Data, we will attempt to redirect the third party to request that data directly from you. As part of this effort, we may provide your basic contact information to the third party. If legally compelled to disclose Customer Data to a third party, we will promptly notify you and provide a copy of the demand, unless legally prohibited from doing so. You are responsible for responding to requests by third parties regarding your use of the Offering, such as requests to take down content under the Digital Millennium Copyright Act.

g. Subcontractors. We may hire other companies to provide limited services on our behalf, such as customer support. Any such subcontractors will be permitted to obtain Customer Data only to deliver the services we have retained them to provide, and they are prohibited from using Customer Data for any other purpose. We remain responsible for our subcontractors' compliance with the obligations set forth in this Agreement.

h. Compliance with Law. We will comply with all laws applicable to our provision of the Offering, including applicable security breach notification laws, but not including any laws applicable to you or your industry that are not generally applicable to information technology services providers. You will comply with all laws applicable to your Customer Solution, Customer Data, and your use of the Offering, including any laws applicable to you or your industry.

### 3. Pricing and Payment.

a. Available Subscription Offers. The Portal provides Quotes for available Subscription offers, which generally include (but are not limited to) one or a combination of the following:

- i. Commitment Offering. You commit in advance to purchase a specific quantity for use during a Term and to pay upfront or on a periodic basis during the Term in advance of use. Additional or other usage (for example, usage beyond your commitment quantity) may be billed like a Consumption Offering.
- ii. Consumption Offering (also known as Pay-As-You-Go). You pay based on actual usage in the preceding quarter with no upfront commitment. Payment is on a quarterly basis in arrears.
- iii. Limited Offering. You receive a limited quantity of Offering for a limited term without charge (for example, a free trial), as part of another OSIssoft offering (for example, OSIssoft's Connected Services Agreement Program), or on an academic basis. Provisions in this Agreement with respect to pricing, cancellation fees, payment, and data retention may not apply.

b. Pricing. Unless we specify otherwise in the Quote and/or accompanying documentation, licensing and pricing for the Offering will be based on the average number of daily accessed streams across all connections. A stream is accessed, and thus counted, when it is retrieved through an API call, either internal or external. Unless we specify otherwise in the Quote and/or accompanying documentation, multiple API calls from the same account to the same stream within the same day do not affect the accessed stream count, regardless of the number of calls. Any add-ons purchased may follow a different set of licensing and pricing metrics. Add-on features to the package are priced according to metrics specified in the Quote.

c. Overages. Overages will be assessed and invoiced at the end of the Subscription Term, based on a percent of usage that exceeds committed usage (as previously specified in the Quote and/or accompanying documentation) and will be billed at the then-current price. We reserve the right to monitor your usage of APIs and place limits on access to such APIs if we believe that your usage is in breach of this Agreement or

may negatively affect the Offering (or otherwise impose liability on us).

d. **Order and Payment.** Unless we notify you that you do not meet our then-current credit standards and policies, you will pay our invoices within thirty (30) days of the invoice date, unless another payment period is specified in the Quote and/or accompanying documentation. If we notify you, invoices will be due upon receipt. All fees are non-cancelable, non-contingent and non-refundable except as expressly stated in this Agreement. You will pay all amounts due under our invoices in U.S. currency, free of any and all currency controls or other restrictions. If you do not pay our invoices in full by the (40) fortieth day after the invoice date, you will be charged the lower of 1.5% per month or the highest rate permitted by applicable law on the amount that is past due. Except for taxes paid by us on our net income, unless otherwise agreed in this Agreement, all amounts due pursuant to our invoices are net of, and you will be solely responsible for any shipping charges, use, sales, value-added, import or other taxes, fees, tariffs or duties associated with this Agreement per the Taxes Section below.

i. For Commitment Offerings, you must pre-pay based on your committed usage. The price level may be based on the quantity of Offering you ordered. Some offers may permit you to modify the quantity of Offering ordered during the Term and your price level may be adjusted accordingly, but price level changes are not retroactive. During the Term of your Subscription, prices for Offering will not be increased, as to your Subscription, from those posted in the Portal at the time your commitment period commenced or renewed, except for Previews where prices are identified as temporary. All prices are subject to change at the beginning of any Subscription renewal.

ii. For Consumption Offerings, pricing is subject to change at any time upon notice. You will be billed on a quarterly basis, unless otherwise stated in the Quote.

e. **Overdue Charges.** If the invoiced amount is not received by us by the due date, we will notify you. If any amount owing by you under this Agreement for our service is thirty (30) or more days overdue, we may suspend our services to you until such amounts are paid in full.

f. **Cancellation Policy.** You may cancel this subscription at any time upon thirty (30) days written notice. You will have access to your data for thirty (30) days after cancellation. Payment is required for any outstanding fees incurred.

g. **Affiliates.** You may place orders for your Affiliates under this Agreement and grant your Affiliates administrative rights to manage subscriptions, but Affiliates may not place orders under this Agreement directly to us. If you grant any rights to Affiliates with respect to your Subscription, such Affiliates shall be bound by this Agreement and you agree to be jointly and severally liable for any actions of such Affiliates related to their use of the Offering.

h. **Renewal.** Upon renewal of your Subscription, this Agreement will terminate and your Subscription will thereafter be governed by the terms and conditions set forth on the Portal on the date on which your Subscription is renewed (the "Renewal Terms"). If you do not agree to any Renewal Terms, you may decline to renew your Subscription.

i. For Commitment Offerings, you may have the option to have a Subscription automatically renew or terminate upon expiration of the Term. If available, automatic renewal is pre-selected. You can contact us in writing to opt out of automatic renewal at any time during the Term. If the existing Term is longer than one calendar month, we will provide you with written notice of the automatic renewal before the expiration of the Term. If you do not opt out of

automatic renewal you accept and agree to the then-current OSISOFT Cloud Services Agreement available at: <https://www.osisoft.com/terms-and-conditions/>.

- ii. For Consumption Offerings, the Subscription renews automatically at the end of every month until you terminate the Subscription.
- iii. For Limited Offerings, renewal may not be permitted.

i. Taxes. Prices are exclusive of any taxes. You shall pay any applicable value added, goods and services, sales, or like taxes that are owed with respect to any order placed under this Agreement and which we are permitted to collect from you under applicable law. You shall be responsible for any applicable stamp taxes and for all other taxes that you are legally obligated to pay including any taxes that arise on the provision of the Offering to your Affiliates. We shall be responsible for all taxes based on our net income or on our property ownership. If any taxes are required to be withheld on payments you make to us, you may deduct such taxes from the amount owed to us and pay them to the appropriate taxing authority, provided however that you promptly secure and deliver an official receipt for those withholdings and other documents we reasonably request to claim a foreign tax credit or refund. You will make certain that any taxes withheld are minimized to the extent possible under applicable law.

## 4. Term, Termination and Suspension.

a. Agreement Term and Termination. This Agreement will remain in effect until the expiration, termination, or renewal of your Subscription, whichever is earliest.

b. Subscription Term and termination. You may terminate this Subscription at any time during its Term; however, you must pay all amounts due and owing before the termination is effective, and no refunds will be provided.

- i. Ninety (90) Days Subscription. A Subscription with a ninety (90) days Term may be terminated at any time without any cancellation fee.
- ii. Subscriptions of more than ninety (90) days. If you terminate a Subscription within 30 days of the date on which the Subscription became effective or was renewed, you must pay for the initial 30 days of the Subscription, but no payments will be due for the terminated portion of the Subscription. If you terminate a Subscription at any other time during the Term, you must pay for the terminated portion of the Subscription as set forth in the Quote and/or accompanying documentation for your Subscription.
- iii. Limited Offering. This Agreement will terminate if the agreement under which a Subscription was provided expires or is otherwise terminated.

c. Customer Data Return and Deletion. When a Subscription expires or terminates, we will retain any Customer Data you have not deleted for at least ninety (90) days so that you may request it, except for free trials, where we may delete Customer Data immediately without any retention period. You remain responsible for all storage and other applicable charges during this retention period. Following the expiration of this retention period, we may delete all Customer Data, including any cached or back-up copies. Any retention period longer than ninety (90) days will be noted in the Quote and/or accompanying documentation. You agree that we have no additional obligation to continue to hold, export or return Customer Data and that we have no liability whatsoever for deletion of Customer Data pursuant to these terms.

d. Regulatory. In any country where any current or future government regulation or requirement applies to us, but not generally to businesses operating there, presents a hardship to us operating the Offering without change, and/or causes us to believe this Agreement or the Offering may be in conflict with any such regulation or requirement, we may change the Offering or terminate this Agreement. If we use this subsection 4(d) of the Agreement to change the Offering, then you may terminate this Agreement.

e. Suspension. We may suspend your use of the Offering if: (1) it is reasonably needed to prevent unauthorized access to Customer Data; (2) you fail to respond to a claim of alleged infringement under Section 7 within a reasonable time; (3) you do not pay amounts due under this Agreement; or (4) you do not abide by the Acceptable Use Policy stated in paragraph 1(e) or you violate other terms of this Agreement. If one or more of these conditions occurs, then:

- i. For Limited Offerings, we may suspend your use of the Offering or terminate your Subscription and your account immediately without notice.
- ii. For all other Subscriptions, a suspension will apply to the minimum necessary part of the Offering and will be in effect only while the condition or need exists. We will give notice before we suspend, except where we reasonably believe we need to suspend immediately. We will give at least fourteen (14) days' notice before suspending for non-payment. If you do not fully address the reasons for the suspension within fourteen (14) days after we suspend, we may terminate your Subscription and delete your Customer Data without any retention period. We may also terminate your account if your use of the Offering is suspended more than twice in any twelve (12) consecutive months period.

## 5. Service Level Agreement and Support

a. Provision of Purchased Offering. We will use commercially reasonable efforts to make the Offering available 99% of the time, calculated on a monthly basis, except for: (i) planned downtime (of which we shall give at least forty-eight (48) hours electronic notice, and (ii) any unavailability caused by circumstances beyond our reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving our employees), Internet service provider failure or delay, or denial of service attack. We will not modify the terms of this subsection 5(a) during the initial terms of your subscription. Any updated terms will be reflected in your renewal term.

b. Requesting Credits. If the Offering does not meet the 99% availability described above, then you may be eligible for a credit towards your service fees. A claim must be sent to [cloudservices@osisoft.com](mailto:cloudservices@osisoft.com) for us to consider any credit requests. A valid claim must include the following information:

- i. A detailed description of the incident(s) that caused the downtime;
- ii. Information regarding the time and duration of the downtime;
- iii. The number and location(s) of affected users (if applicable), and;
- iv. Descriptions of your attempts to resolve the incident(s) causing the downtime at the time of occurrence.

Claims must be received within thirty (30) days of the incident causing the downtime. We will evaluate all information reasonably available to us and make a good faith determination of whether you are eligible for credits and amount of credits owed. We will use commercially reasonable efforts to process claims during the subsequent thirty (30) days and within sixty (60) days of receipt of the claim.

c. Credits. Credits are your sole and exclusive remedy for any availability issues related to this offering. You may not unilaterally offset service fees for availability issues. Credits will be calculated as the credit percentage identified in the credit table below multiplied by your subscription fee attributable to the corresponding month (calculated on a straight line pro-rated basis with respect to any fees paid in advance).

Uptime Percentage (UP)	Credit Percentage (CP)
95% <= UP < 99%	10%
90% <= UP < 95%	20%
UP < 90%	30%

d. Technical Support. We will provide you with our standard support for this offering at no additional charge. End Users can access contact information for OSIssoft Technical Support via the Portal. You will be entitled to contact the OSIssoft Technical Support twenty-four (24) hours a day, seven (7) days a week to ask questions or seek advice regarding the use of the Offering. We will assist End Users in using this offering and in identifying and providing workarounds, if possible, for problems or limitations with the service. Such assistance may include remote computer communications to End Users' facilities. We will use reasonable best efforts to respond to all Technical Support queries within four (4) hours.

e. Disaster Recovery (DR). While OCS is built on Azure's highly available and resilient services for storage and compute, we have put in place DR procedures to protect against catastrophic events. In case of such event, we will use these procedures to deliver reasonable best efforts for data Recovery Time Objective (RTO) and Recovery Point Objective (RPO).

## 6. Warranties.

a. Limited Warranty. We warrant that the Offering will meet the terms of the Service Level Agreements (SLAs) specified in the Offering Details during the Term. Your only remedies for breach of this warranty are those in the SLAs.

b. Limited Warranty Exclusions. This limited warranty is subject to the following limitations:

- i. any implied warranties, guarantees, or conditions not able to be disclaimed as a matter of law will last one year from the start of the limited warranty;
- ii. this limited warranty does not cover problems caused by accident, abuse, or use of the Offering in a manner inconsistent with this Agreement or our published documentation or guidance, or resulting from events beyond our reasonable control;
- iii. this limited warranty does not apply to problems caused by any failure to meet minimum system requirements; and
- iv. this limited warranty does not apply to Previews or free offerings.

DISCLAIMER. Other than this warranty, we provide no warranties, whether express, implied, statutory, or otherwise, including warranties of merchantability or fitness for a particular purpose. These disclaimers will apply except to the extent applicable law does not permit them.

## 7. Defense of Claims.

### a. Defense.

- i. We will defend, indemnify and hold you harmless against any unaffiliated third-party claims that the Offering infringes the third party's patent, copyright, or trademark or makes unlawful use of its trade secret.
- ii. You will defend, indemnify and hold us harmless against any third party claims made by (1) that the Customer Solution or Customer Data infringes the third party's patent, copyright, or trademark or makes unlawful use of its trade secret; and/or (2) arising out of or related to your use of the Offering or any of your acts or omissions related to this Agreement.

b. Limitations. Our obligations in subsection 7(a) will not apply to a claim or award based on: (i) the Customer Solution, Customer Data, Non-OSIsoft Products, modifications you make to the Offering, or materials you provide or make available in the course of using the Offering; (ii) your combination of the Offering with, or damages based upon the value of, a Non-OSIsoft Product, data, or business process; (iii) your use of a OSIsoft trademark without our express written consent, or your use of the Offering after we notify you to stop due to a third-party claim; (iv) your redistribution of the Offering to, or use for the benefit of, any unaffiliated third party; or (v) Customer Data shared between you and another Party using the Offering.

c. Remedies. If we reasonably believe that a claim under subsection 7(a)(i) may bar or materially impact your use of Subscription rights, we will seek to: (i) obtain the right for you to keep using it; or (ii) modify or replace it with a Subscription that is reasonably similar. If these options are not commercially reasonable, we may terminate your rights to use the Offering and then refund any advance payments for unused Subscription rights.

d. Obligations. A party seeking protection under Section 7(a) must promptly notify the other party promptly of any such claim in writing. The party seeking protection must (1) give the other sole control over the defense and settlement of the claim; and (2) provide reasonable assistance in defending the claim. The party providing the protection will (1) reimburse the other for reasonable out-of-pocket expenses that it incurs in giving that help and (2) pay the amount of any resulting adverse final judgment (or settlement that the other consents to). The parties' respective rights to defense and payment of judgments or settlements under this Section are in lieu of any common law or statutory indemnification rights or analogous rights, and each party waives such common law rights.

## 8. Limitation of Liability.

a. Limitation. The aggregate liability of each party under this Agreement is limited to direct damages up to the amount paid under this Agreement for the Offering giving rise to that liability during the 12 months before the liability arose, or for the Offering provided free of charge, Five United States dollars (\$5.00 USD).

b. EXCLUSION. Neither party will be liable for indirect, special, incidental, consequential, punitive, or exemplary damages, or damages for loss of data, lost profits, revenues, business interruption, or loss of business information, even if the party knew that such damages were possible.

c. Exceptions to Limitations. The limits of liability in this Section apply to the fullest extent permitted by applicable law, but do not apply to: (1) the parties' obligations under Section 7 (Defense of Claims) or

subsection 10(m); (2) violation of the other's intellectual property rights; or (3) your obligations under Section 2 (Security, Privacy and Data Protection).

## 9. Software.

- a. Software Provided for Use on Devices. Software provided to you in connection with the Offering may only be used by you to access or use the Offering and not on a standalone basis. You may install such Software on as many devices as necessary to use the Offering.
- b. Effect of Termination or Expiration on Software. If this Agreement or the related Subscription is terminated or expires, then you must delete all copies of Software and destroy any associated media.
- c. Other Rights. Your rights to access Software on any device do not give you any right to implement OSIssoft patents or other OSIssoft intellectual property in software or devices that access that device.

## 10. Miscellaneous.

- a. Notices. You must send notices by mail to the address below:

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COPIES SHOULD BE SENT TO:

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OSIssoft, LLC  
Legal Department  
1600 Alvarado Street  
San Leandro, CA 94577 - USA

Via Facsimile: (510) 295.2444

With an electronic copy to: [legal@osisoft.com](mailto:legal@osisoft.com)

You agree to receive electronic notices from us, which will be sent by email to the account administrator you specify in the Portal. Notices are effective on the date on the return receipt or, for email, when sent. You are responsible for ensuring that the account administrator email address that you specify in the Portal is accurate and current, and you agree that any email notice that we send to such email address will be effective when sent.

- b. Assignment. You may not assign this Agreement either in whole or in part.
- c. Severability. If any part of this Agreement is held unenforceable, by a court of competent jurisdiction, such part of the Agreement shall be modified and interpreted to the fullest extent permitted by law, to achieve the original objectives of such part. Any remaining provisions shall remain in full force and effect.
- d. Waiver. Failure to enforce any provision of this Agreement will not constitute a waiver.
- e. No Agency. You and OSIssoft are independent contractors. This Agreement does not create an agency, partnership, or joint venture.
- f. No Third-party Beneficiaries. There are no third-party beneficiaries to this Agreement.
- g. Applicable Law. This Agreement is governed by State of California law, without regard to its conflict of laws principles, except that (i) if you are a U.S. Government entity, this Agreement is governed by the laws of the United States, and (ii) if you are a state or local government entity in the United States, this Agreement is governed by the laws of that state.

h. Dispute Resolution. Any action to enforce this Agreement must be brought in the State of California. This choice of jurisdiction does not prevent either party from seeking injunctive relief in any appropriate jurisdiction with respect to violation of intellectual property rights.

i. Entire Agreement. This Agreement is the entire Agreement concerning its subject matter and supersedes any prior or concurrent communications.

j. Survival. The following provisions will survive this Agreement's termination or expiration: 1(c)–(f), 2(b)–(g), 3(e), 4(b)–(c), sections 5–7, 8(c), and sections 9–12.

k. U.S. Export Jurisdiction. The Offering is subject to U.S. export jurisdiction. You must comply with all applicable laws, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end-user, end-use and destination restrictions issued by U.S. and other governments.

l. Force Majeure. Neither party will be liable for any failure in performance due to causes beyond its reasonable control including, without limitation, acts of God and regulatory authorities. Notwithstanding the forgoing, you shall be responsible for payment of unpaid fees in accordance with the Quote and this Agreement.

m. Modifications. We may modify this Agreement at any time by posting a revised version on the legal information section of the Portal or an alternate site we identify or by notifying you in accordance with subsection 10(a). Modified terms that relate to changes or additions to the Offering or that are required by law will be effective immediately, and by continuing to use the Offering you will be bound by the modified terms. All other modified terms will be effective upon renewal (including automatic renewal) of an existing Subscription or order for a new Subscription.

## 11. Evaluation Offerings

a. If you receive access to an Offering free of charge on an evaluation basis ("Evaluation Offering"), use is permitted only for your internal evaluation during the period designated by us (or if not designated, 30 days). The Evaluation Offering is optional and either party may cease participating in the Evaluation Offering at any time for any reason. The Evaluation Offering may be inoperable, incomplete or include features that we may never release, and their features and performance information are our Confidential Information. The Evaluation Offering may have a time-out feature that will eliminate access to the Evaluation Offering and any Customer Data stored within the Evaluation Offering at any time without additional notice. Without limiting the generality of this Agreement, we will not be responsible for any claims or damages which may arise from this time-out and you will indemnify and hold us harmless from any claims which arise or relate to such time-out taking effect. **Notwithstanding anything else in this Agreement, we provide no warranty, indemnity, or service guarantees for the Evaluation Offering and our liability for the Evaluation Offering will not exceed Five United States Dollars (\$5.00).**

## 12. Country-specific General Terms determined by location.

If you are located in any of the countries identified below, the following country-specific provisions replace or supplement the equivalent provisions above as noted:

Any country located in the continent of Africa or in the European Union.

Applicable Law. This Agreement will be governed by and construed in accordance with the laws of England. The 1980 United Nations Convention on Contracts for the International Sale of Goods and its related

instruments will not apply to this Agreement.

When bringing an action to enforce this Agreement in any of the above-listed countries, (including any agreement incorporating these terms), the parties agree the action will finally be resolved by arbitration in accordance with the terms of this section. The decision of an arbitrator shall be final, binding, and uncontestable and may be used as a basis for judgment thereon in the above-named countries or elsewhere. To the fullest extent permitted by applicable law, the parties waive their right to any form of appeal or other similar recourse to a court of law. These choices of venue do not prevent either party from seeking injunctive relief with respect to a violation of intellectual property rights or confidentiality obligations in any appropriate jurisdiction. Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in London, England in accordance with the Rules of Arbitration of the International Chamber of Commerce (ICC), which rules are deemed to be incorporated by reference into this section. The arbitration shall be conducted by one arbitrator to be appointed by in accordance with ICC Rules. Arbitration proceedings shall be conducted in English.

Exclusions. In no event will either party be liable for loss of profits or loss of anticipated savings (in either case whether direct or indirect), indirect, incidental, special, punitive, or consequential damages, including loss of use, or interruption of business, however caused or on any theory of liability.

Liability for death or personal injury. Nothing in this Agreement shall exclude liability for death or personal injury caused by negligence or liability for fraudulent misrepresentation.

Australia, Bangladesh, India, Indonesia, Japan, Korea, New Zealand, the People's Republic of China, the Philippines, Sri Lanka, Thailand, and Vietnam.

Dispute resolution. When bringing an action to enforce this Agreement in any of the above-listed countries, (including any agreement incorporating these terms), the parties agree the action will finally be resolved by arbitration in accordance with the terms of this section. The decision of an arbitrator shall be final, binding, and incontestable and may be used as a basis for judgment thereon in the above-named countries or elsewhere. To the fullest extent permitted by applicable law, the parties waive their right to any form of appeal or other similar recourse to a court of law. These choices of venue do not prevent either party from seeking injunctive relief with respect to a violation of intellectual property rights or confidentiality obligations in any appropriate jurisdiction. The language of arbitration shall be English. In addition, the following terms apply for the countries listed below.

Australia, Bangladesh, Indonesia, Japan, Korea, New Zealand, Sri Lanka, Thailand, and Vietnam. Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC"), which rules are deemed to be incorporated by reference into this section. The Tribunal shall consist of one arbitrator to be appointed by the Chairman of SIAC. Arbitration proceedings shall be conducted in English.

India. The arbitration shall be in accordance with the International Arbitration Rules of the Singapore International Arbitration Centre ("SIAC"), which rules are deemed to be incorporated by reference into this subsection. The Tribunal shall consist of one arbitrator to be appointed by the Chairman of SIAC. The language of arbitration shall be English and the venue of arbitration shall be Singapore. The decision of the arbitrator shall be final and binding. The courts of New Delhi shall have exclusive jurisdiction to entertain

any suits relating to enforcement of the award and/or for award of any interim protection.

The People's Republic of China ("PRC"). Any dispute arising out of or in connection with this Agreement (including any Supplemental Agreement), including any question regarding its existence, validity or termination, will be submitted to binding arbitration at the China International Economic and Trade Arbitration Commission in Beijing ("CIETAC") in accordance with its rules in effect from time to time.

The Philippines. Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC"), which rules are deemed to be incorporated by reference into this section. The Tribunal shall consist of one arbitrator to be appointed by the Chairman of SIAC.