



Master Subscription Agreement

THIS AGREEMENT GOVERNS YOUR ACQUISITION AND USE OF OUR SERVICES.

BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

You will be subject to these terms for the duration of your contract period unless both parties agree to a new set of terms.

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1. DEFINITIONS

"Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"Agreement" means this Master Subscription Agreement.

"Beta Services" means Our services that are not generally available to customers.

"Content" means information obtained by Us from Our content licensors or publicly available sources and provided to You pursuant to an Order Form, as more fully described in the Documentation.

"Documentation" means Our online user guides, documentation, and help and training materials, as updated from time to time, accessible via help.getopenwater.com or login to the applicable Service.

"Malicious Code" means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

"Marketplace" means an online directory, catalog or marketplace of applications that interoperate with the Services.

"Non-OpenWater Applications" means a Web-based or offline software application that is provided by You or a third party and interoperates with a Service, including, for example, an application that is developed by or for You, a single sign on provider, or a payment gateway.

"Order Form" means an ordering document specifying the Services to be provided hereunder that is entered into between You and Us or any of Our Affiliates, including any Addendum and supplements thereto. By entering into an Order Form hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto.

"Purchased Services" means Services that You or Your Affiliate purchase under an Order Form.

"Services" means the products and services that are ordered by You in an Order Form and made available online by Us, including associated offline components, as described in the Documentation. "Services" exclude Content and Non-OpenWater Applications.

"User" means an individual who is authorized by You to use a Service, for whom You have ordered the Service, and to whom You (or We at Your request) have supplied a user identification and password. Users may include, for example, Your employees, consultants, contractors and agents, and third parties with which You transact business.

"We," "Us" or "Our" means the OpenWater company described in Section 13 (Who You Are Contracting With, Notices, Governing Law and Jurisdiction).

"You" or "Your" means the company or other legal entity for which you are accepting this Agreement, and Affiliates of that company or entity.

"Your Data" means electronic data and information submitted by or for You to the Purchased Services or collected and processed by or for You using the Purchased Services.

2. REFUND POLICY

We will make one or more Services available to You on upon execution of the Order Form. On or before the listed Contract Start Date You may request a refund by sending a message to our billing department at billing@getopenwater.com. If a refund is authorized under Section 6.1 of this Agreement, the refund will be provided via the same method of payment you used to execute the Order Form where possible. Where an electronic refund is not possible, a check will be issued to your billing address within 10 (Ten) business days. After the Contract Start Date, refunds are not permitted. Unless otherwise stated, there are no exclusions to the products available for refund.

ANY DATA YOU ENTER INTO THE SERVICES, AND ANY CUSTOMIZATIONS MADE TO THE SERVICES BY OR FOR YOU, WILL BE PERMANENTLY LOST UPON REFUND EXECUTION. YOU MUST EXPORT YOUR DATA BEFORE THE REFUND IS REQUESTED OR YOUR DATA WILL BE PERMANENTLY LOST.

3. OUR RESPONSIBILITIES

3.1. Provision of Purchased Services. We will (a) make the Services and Content available to You pursuant to this Agreement and the applicable Order Forms, (b) provide Our standard support for the Purchased Services to You at no additional charge, and/or upgraded support if purchased, and (c) use commercially reasonable efforts to make the online Purchased Services available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which We shall electronically give at least 72 hours notice for regular, scheduled maintenance and, when practicable, give reasonable notice for emergency maintenance and which We shall schedule to the extent practicable during the weekend hours between 9:00 p.m. Friday and 6:00 a.m. Monday Eastern time), 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, Non-OpenWater Application, or denial of service attack. Independently verified uptime history can be viewed at <http://stats.pingdom.com/8qjhe67vji0u/1030343>. Should uptime fall below 99.5% on a single day or less than 99.9% for a given month, the customer may choose to extend the license fee by a period of 10x the outage duration by request to help@openwater.com. In the event that independently verified uptime falls below 99.9% for a given month more than three (3) times in a twelve (12) month period, you may terminate the remainder of the agreement and receive a prorated refund for the remaining term by request to help@openwater.com. Customer service / help desk support will be made available from 9 AM to 7 PM Eastern time, weekdays excluding United States Federal Holidays. Support is available via a ticketed help desk by emailing help@openwater.com or via phone at +1 202-759-2528. Normal ticket resolution generally occurs within less than 1 business hour. Should a ticket require escalation (e.g. to developers) that would result in a resolution time of greater than 1 business day, We shall Notify You in writing.

3.2. Protection of Your Data. We will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data, as described in Appendix A. We will not access, use, modify or disclose Your Data except (a) to provide the Purchased Services and prevent or address service or technical problems, (b) as compelled by law in accordance with Section 8.3 (Compelled Disclosure) below, or (c) as You expressly permit in writing. If and to the extent the European Union's and/or the United Kingdom's General Data Protection Regulation ("GDPR") applies to Our processing of Your Data under this Agreement, this Agreement incorporates the OpenWater Data Processing Agreement ("DPA") posted at <https://www.getopenwater.com/dpa>, as may be amended from time to time.

3.3 Privacy. By entering into this Agreement, you are also consenting to the use and disclosure of Your personal information as described in Our Privacy Policy at <https://www.getopenwater.com/privacy-policy>, which explains how and why we collect, use, manage, disclose and transfer your personal information, and explains your rights regarding your personal information. Personal information You provide to us is stored on a password protected server accessible only by an administrator. We adhere to generally accepted industry standards to protect the personal information You submit to Us; however, We cannot guarantee the security of Your personal information transmitted to Our Site because any transmission of information over the Internet has its inherent risks. Any transmission of personal information is at Your own risk. We are not responsible for circumvention of any privacy settings or security measures contained on the Site. You are responsible for keeping Your login credentials, if any, confidential.

3.4 Our Personnel. We will be responsible for the performance of Our personnel (including Our employees and contractors) and their compliance with Our obligations under this Agreement, except as otherwise specified herein.

3.5 Beta Services. From time to time, We may invite You to try Beta Services at no charge or a discounted rate. You may accept or decline any such trial in Your sole discretion. Beta Services will be clearly designated as beta, pilot, limited release, developer preview, non-production, evaluation or by a description of similar import. Beta Services are for evaluation purposes and not for production use, are not considered "Services" under this Agreement, are not supported, and may be subject to additional terms. Unless otherwise stated, any Beta Services trial period will expire upon the earlier of one year from the trial start date or the date that a version of the Beta Services becomes generally available. We may discontinue Beta Services at any time in Our sole discretion and may never make them generally available. We will have no liability for any harm or damage arising out of or in connection with a Beta Service.

4. USE OF SERVICES AND CONTENT

4.1 Subscriptions. Unless otherwise provided in the applicable Order Form, (a) Services and Content are purchased as subscriptions, (b) subscriptions may be added during a subscription term at the then-current pricing, prorated for the portion of that subscription term remaining at the time the subscriptions are added, and (c) any added subscriptions will terminate on the same date as the underlying subscriptions.

4.2 Usage Limits. Services and Content are subject to usage limits, including, for example, the quantities specified in Order Forms. Unless otherwise specified, (a) a quantity in an Order Form refers to Users, and the Service or Content may not be accessed by more than that number of Users, (b) a User's password may not be shared with any other individual, and (c) a User identification may be reassigned to a new individual replacing one who no longer requires ongoing use of the Service or Content. If You exceed a contractual usage limit, We may work with You to seek to reduce Your usage so that it conforms to that limit. If, notwithstanding Our efforts, You are unable or unwilling to abide by a contractual usage limit, You will execute an Order Form for additional quantities of the applicable Services or Content promptly upon Our request, and/or pay any invoice for excess usage in accordance with Section 6.2 (Invoicing and Payment).

4.3 Your Responsibilities. You will (a) be responsible for Users' compliance with this Agreement, (b) be responsible for the accuracy, quality and legality of Your Data and the means by which You acquired Your Data, Your use of Your Data with the Services, and the interoperation of any Non- OpenWater Applications with which You use Services or Content (c) use reasonable efforts (e.g., do not share passwords) to prevent unauthorized access to or use of Services and Content, and notify Us promptly of any such unauthorized access or use, (d) use Services and Content only in accordance with applicable laws and government regulations, and (e) comply with terms of service of Non- OpenWater Applications with which You use Services or Content. Any use of the Services in breach of the foregoing by You or Your Users that may threaten the security, integrity or availability of Our Services, may result in immediate suspension of the Services; however, We will use commercially reasonable efforts under the circumstances to provide You with notice and an opportunity to remedy such violation or threat prior to any such suspension.

4.4 Usage Restrictions. You will not (a) make any Service or Content available to, or use any Service or Content for the benefit of, anyone other than You or Users, (b) sell, resell, license, sublicense, distribute, rent or lease any Service or Content, or include any Service or Content in a service bureau or outsourcing offering, (c) use a Service to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use a Service to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of any Service or third-party data contained therein, (f) attempt to gain unauthorized access to any Service or Content or its related systems or networks, (g) permit direct or indirect access to or use of any Service or Content in a way that circumvents a contractual usage limit, (h) copy a Service or any part, feature, function or user interface (i) reverse engineer any Service (to the extent such restriction is permitted by law).

4.5 External-Facing Services. If You subscribe to a Service for creation and hosting of external-facing websites, You will comply with, and be responsible for Your and your Users' compliance with applicable law in any use of cookies or other tracking technologies on such websites.

4.6. Removal of Content and Non-OpenWater Applications. If We are required by a licensor to remove Content, or We receive information that Content provided to You may violate applicable law or third-party rights, We may so notify You and in such event You will promptly remove such Content from Your systems. If We receive information that a Non-OpenWater Application hosted on a Service by You may violate Our External-Facing Services or applicable law or third-party rights, We may so notify You and in such event You will promptly disable such Non-OpenWater Application or modify the Non-OpenWater Application to resolve the potential violation. If You do not take required action in accordance with the above, We may disable or suspend the applicable Content, Service and/or Non-OpenWater Application until the potential violation is resolved.

5. NON-OpenWater PROVIDERS

5.1. Acquisition of Non-OpenWater Products and Services. We or third parties may make available (for example, through a Marketplace or otherwise) third-party products or services, including, for example, Non- OpenWater Applications and implementation and other consulting services. Any acquisition by You of such non- OpenWater products or services, and any exchange of data between You and any non-OpenWater provider, is solely between You and the applicable non-OpenWater provider. We do not warrant or support Non- OpenWater Applications or other non-OpenWater products or services, whether or not they are designated by Us as "certified" or otherwise, except as specified in an Order Form.

5.2. Non-OpenWater Applications and Your Data. If You install or enable a Non-OpenWater Application for use with a Service, You grant Us permission to allow the provider of that Non-OpenWater Application to access Your Data as required for the interoperation of that Non-OpenWater Application with the Service. We are not responsible for any disclosure, modification or deletion of Your Data resulting from access by a Non-OpenWater Application.

5.3. Integration with Non-OpenWater Applications. The Services may contain features designed to interoperate with Non-OpenWater Applications. To use such features, You may be required to obtain access to Non-OpenWater Applications from their providers, and may be required to grant Us access to Your account(s) on the Non-OpenWater Applications. If the provider of a Non-OpenWater Application ceases to make the Non-OpenWater Application available for interoperation with the corresponding Service features on reasonable terms, We may cease providing those Service features without entitling You to any refund, credit, or other compensation.

6. FEES AND PAYMENT FOR PURCHASED SERVICES

6.1. Fees. You will pay all fees specified in Order Forms. Except as otherwise specified herein or in an Order Form, (i) fees are based on Services and Content purchased and not actual usage, (ii) payment obligations are non-cancellable and fees paid are non-refundable after the Contract Start Date, and (iii) quantities purchased cannot be decreased during the relevant subscription term.

6.2. Invoicing and Payment. Payment shall be made thirty (30) days after receipt of invoice, either via credit card or check per the terms set forth by the Order Form.

6.3. Overdue Charges. If any invoiced amount is not received by Us by the due date, then without limiting Our rights or remedies, (a) those charges will accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, and (b) We may condition future subscription renewals and Order Forms on payment terms shorter than those specified in Section 6.2 (Invoicing and Payment).

6.4. Suspension of Service and Acceleration. If any amount owing by You under this or any other agreement for Our services is 30 or more days overdue (or 10 or more days overdue in the case of amounts You have authorized Us to charge to Your credit card), We may, without limiting Our other rights and remedies, accelerate Your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Our services to You until such amounts are paid in full. We will give You at least 10 days' prior notice that Your account is overdue, in accordance with Section 13.2 (Manner of Giving Notice), before suspending services to You.

6.5. Payment Disputes. We will not exercise Our rights under Section 6.3 (Overdue Charges) or 6.4 (Suspension of Service and Acceleration) above if You are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute, and so long as all undisputed charges are paid in full by the due date.

6.6. Taxes. Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). You are responsible for paying all Taxes associated with Your purchases hereunder. If We have the legal obligation to pay or collect Taxes for which You are responsible under this Section 6.6, We will invoice You and You will pay that amount unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, We are solely responsible for taxes assessable against Us based on Our income, property and employees.

6.7. Future Functionality. You agree that Your purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Us regarding future functionality or features.

7. PROPRIETARY RIGHTS AND LICENSES

7.1. Reservation of Rights. Subject to the limited rights expressly granted hereunder, We and Our licensors reserve all of Our/their right, title and interest in and to the Services and Content, including all of Our/their related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth herein.

7.2. License by Us to Use Content. We grant to You a worldwide, limited-term license, under Our applicable intellectual property rights and licenses, to use Content acquired by You by use of the software.

7.3. License by You to Host Your Data and Applications. You grant Us and Our Affiliates a worldwide, limited-term license to host, copy, transmit and display Your Data, and any Non-OpenWater Applications and program code created

by or for You using a Service, as necessary for Us to provide the Services in accordance with this Agreement. Subject to the limited licenses granted herein, We acquire no right, title or interest from You or Your licensors under this Agreement in or to Your Data or any Non-OpenWater Application or program code.

7.4. License by You to Use Feedback. You grant to Us and Our Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into the Services any suggestion, enhancement request, recommendation, correction or other feedback provided by You or Users relating to the operation of the Services.

7.5. Federal Government End Use Provisions. We provide the Services, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not granted under these terms, it must negotiate with Us to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in any applicable agreement.

8. CONFIDENTIALITY

8.1. Definition of Confidential Information. “Confidential Information” means all information disclosed by a party (“Disclosing Party”) to the other party (“Receiving Party”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information includes Your Data; Our Confidential Information includes the Services and Content; and Confidential Information of each party includes the terms and conditions of this Agreement and all Order Forms (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party without use of the Disclosing Party’s Confidential Information.

8.2. Protection of Confidential Information. The Receiving Party (i) shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) (ii) shall not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (iii) except as otherwise authorized by the Disclosing Party in writing, shall limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates’ employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party will disclose the terms of this Agreement or any Order Form to any third party other than its Affiliates, legal counsel and accountants without the other party’s prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate’s, legal counsel’s or accountant’s compliance with this Section 8.2. Notwithstanding the foregoing, We may disclose the terms of this Agreement or any Order Form to a potential buyer or other successor in interest in connection with a merger, restructuring, reorganization, or other sale or transfer of some or all of the assets or equity interests of OpenWater or its Affiliate.

8.3. Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party’s cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party’s Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Receiving Party agrees to disclose only that portion of the Confidential Information which it is advised by counsel it is legally required to disclose and the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

9. REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS

9.1. Representations. Each party represents that it has validly entered into this Agreement and has the legal power to do so.

9.2. Our Warranties. We warrant that (a) this Agreement, the Order Forms and the Documentation (Appendix A) accurately describe the applicable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data, (b) We will not materially decrease the overall security of the Purchased Services during a subscription term, (c) the Purchased Services will perform materially in accordance with the applicable written Documentation, (d) subject to Section 5.3 (Integration with Non-OpenWater Applications), We will not materially decrease the functionality of the Purchased Services during a subscription term, and (e) the Purchased Services and Content will not knowingly introduce Malicious Code into Your systems. For any breach of an above warranty, Your exclusive remedies are those described in Sections 12.3 (Termination) and 12.4 (Refund or Payment upon Termination).

9.3. Disclaimers. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. CONTENT AND BETA SERVICES ARE PROVIDED “AS IS,” EXCLUSIVE OF ANY WARRANTY WHATSOEVER. EACH PARTY DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY HOSTING PROVIDERS.

10. MUTUAL INDEMNIFICATION

10.1. Indemnification by Us. We will defend You against any claim, demand, suit or proceeding made or brought against You by a third party alleging that the use of a Purchased Service in accordance with this Agreement infringes or misappropriates such third party’s intellectual property rights (a “Claim Against You”), and will indemnify You from any damages, reasonable attorney fees and costs finally awarded against You as a result of, or for amounts paid by You under a court-approved settlement of, a Claim Against You, provided You (a) promptly give Us written notice of the Claim Against You, (b) give Us sole control of the defense and settlement of the Claim Against You (except that We may not settle any Claim Against You unless it unconditionally releases You of all liability), and (c) give Us all reasonable assistance, at Our expense. If We receive information about an infringement or misappropriation claim related to a Service, We may in Our discretion and at no cost to You (i) modify the Service so that it no longer infringes or misappropriates, without breaching Our warranties under Section 9.2 (Our Warranties), (ii) obtain a license for Your continued use of that Service in accordance with this Agreement, or (iii) terminate Your subscriptions for that Service upon 30 days’ written notice and refund You any prepaid fees covering the remainder of the term of the terminated subscriptions. The above defense and indemnification obligations do not apply to the extent a Claim Against You arises from Content, a Non-OpenWater Application or Your breach of this Agreement.

10.2. Indemnification by You. You will defend Us against any claim, demand, suit or proceeding made or brought against Us by a third party alleging that Your Data, or Your use of any Service or Content in breach of this Agreement, infringes or misappropriates such third party’s intellectual property rights or violates applicable law (a “Claim Against Us”), and will indemnify Us from any damages, reasonable attorney fees and costs finally awarded against Us as a result of, or for any amounts paid by Us under a court-approved settlement of, a Claim Against Us, provided We (a) promptly give You written notice of the Claim Against Us, (b) give You sole control of the defense and settlement of the Claim Against Us (except that You may not settle any Claim Against Us unless it unconditionally releases Us of all liability), and (c) give You all reasonable assistance, at Your expense.

10.3. Exclusive Remedy. This Section 10 states the indemnifying party’s sole liability to, and the indemnified party’s exclusive remedy against, the other party for any type of claim described in this Section 10.

11. LIMITATION OF LIABILITY

11.1 Limitation of Liability. NEITHER PARTY’S LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL EXCEED THE AMOUNT PAID BY CUSTOMER HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT, PROVIDED THAT IN NO EVENT WILL EITHER PARTY’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER HEREUNDER. THE ABOVE LIMITATIONS WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY. HOWEVER, THE ABOVE LIMITATIONS WILL NOT LIMIT CUSTOMER’S PAYMENT OBLIGATIONS UNDER SECTION 6 (FEES AND PAYMENT FOR PURCHASED SERVICES).

11.2. Exclusion of Consequential and Related Damages. IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN

CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

12. TERM AND TERMINATION

12.1 Term of Agreement. This Agreement commences on the date You first accept it and continues until all subscriptions hereunder have expired or have been terminated.

12.2. Term of Purchased Subscriptions. The initial term of each subscription shall be as specified in the applicable Order Form, and shall automatically renew for a one-year term unless either party provides the other with written notice at least thirty (30) days in advance of the expiration of the current term. OpenWater shall provide notice of renewal and pricing for any renewal term at least 60 days prior to the contract end date.

12.3. Termination. A party may terminate this Agreement for cause (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

12.4. Refund or Payment upon Termination. If this Agreement is terminated by You in accordance with Section 12.3 (Termination), We will refund You any prepaid fees covering the remainder of the term of all Order Forms after the effective date of termination. If this Agreement is terminated by Us in accordance with Section 12.3, You will pay any unpaid fees covering the remainder of the term of all Order Forms. In no event will termination relieve You of Your obligation to pay any fees payable to Us for the period prior to the effective date of termination.

12.5. Your Data Portability and Deletion. Upon request by You made within ten (10) days after the effective date of termination or expiration of this Agreement, We will make the Your Data available to You for export or download. After that 10-day period, We will have no obligation to maintain or provide Your Data, and will thereafter delete or destroy all copies of Your Data in Our systems or otherwise in Our possession or control as provided in the Documentation, unless legally prohibited.

12.6. Surviving Provisions. The Sections titled "Fees and Payment for Purchase Services," "Proprietary Rights and Licenses," "Confidentiality," "Disclaimers," "Mutual Indemnification," "Limitation of Liability," "Refund or Payment upon Termination," "Portability and Deletion of Your Data," "Who You Are Contracting With, Notices, Governing Law and Jurisdiction," and "General Provisions" will survive any termination or expiration if this Agreement.

13. WHO YOU ARE CONTRACTING WITH, NOTICES, GOVERNING LAW AND JURISDICTION

13.1. General. You are contracting with OpenWater Software, LLC, a Delaware Limited Liability Corporation doing business as OpenWater under this Agreement with a mailing address of 1800 Diagonal Road STE 600, Alexandria, VA 22134.

13.2. Manner of Giving Notice. Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (iv) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). Billing-related notices to You shall be addressed to the relevant billing contact designated by You. All other notices to You shall be addressed to the relevant Services system administrator designated by You.

13.3. Agreement to Governing Law and Jurisdiction. This Agreement and all claims arising from or relating to this Agreement shall be governed by the laws of the Commonwealth of Virginia without regard to its conflict of law provisions, and each party submits to the exclusive jurisdiction of the state and federal courts located in Virginia for any disputes arising from or related to this Agreement.

13.4. No Agency. For the avoidance of doubt, We are entering into this Agreement as principal and not as agent for any other OpenWater company. Subject to any permitted Assignment under Section 14.4, the obligations owed by Us under this Agreement shall be owed to You solely by Us and the obligations owed by You under this Agreement shall be owed solely to Us.

14. GENERAL PROVISIONS

14.1. Export Compliance. The Services, Content, other technology We make available, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. You shall not permit Users to access or use any Service or Content in a U.S.-embargoed country (currently Cuba, Iran, North Korea, Sudan or Syria) or in violation of any U.S. export law or regulation.

14.2. Anti-Corruption. You have not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Our employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If You learn of any violation of the above restriction, You will use reasonable efforts to promptly notify Us at support@getopenwater.com.

14.3 Entire Agreement and Order of Precedence. This Agreement is the entire agreement between You and Us regarding Your use of Services and Content and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. The parties agree that any term or condition stated in Your purchase order or in any other of Your order documentation (excluding Order Forms) is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Order Form, (2) this Agreement, and (3) the Documentation.

14.4. Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety (including all Order Forms), without the other party's consent to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

14.5. Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

14.6. Third-Party Beneficiaries. Our Content licensors shall have the benefit of Our rights and protections hereunder with respect to the applicable Content. There are no other third-party beneficiaries under this Agreement.

14.7. Waiver. No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.

14.8. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.

Appendix A – Data Security

We Keep Your Information Private

OpenWater takes your privacy seriously. We do not view, use, distribute, disclose or sell the information stored or collected by your hosted account, whether it involves proprietary data, user information or applicant information, unless we are troubleshooting performance, security or other issues. We will never view this information without asking your permission first.

We Keep Your Data Safe

At OpenWater, all accounts are password-protected, and all passwords stored on our servers are encrypted. Additionally, we prevent brute force attacks by limiting the number of login attempts that a user can make on your account.

We Protect Your Account From Cyber Attacks

OpenWater employs state-of-the-art firewalls to keep threats from penetrating our networks. We also scan servers for malware that might allow attackers to steal data, and we update and patch machines regularly to minimize vulnerabilities. Additionally, we keep our data center facilities under 24/7 surveillance, and we use biometric access controls within all sections of our buildings. Our intrusion detection and prevention systems help stop cyber attacks in their tracks.

We Provide a Controlled Environment for Your Data

OpenWater understands that downtime means lost revenue, so we keep our servers running, no matter what. Our climate-controlled buildings provide an optimal environment for all equipment, and all OpenWater data center facilities are outfitted with the best in fire-suppression technology.

We Strive for 100% Uptime and Guarantee 99.9% Uptime

We utilize redundant power supplies and generators to keep the power on in our hosting facilities at all times. We regularly ask third parties to report on our uptime, and you can review these reports by visiting this link: <http://stats.pingdom.com/8qjhe67vij0u/1030343>

We Perform Nightly Offsite Backup for Your Account

Every night, OpenWater automatically backs up your account in an offsite facility, ensuring that your information is preserved in the event of a disaster. Information is preserved on a rolling 30-day basis so that you can quickly recover from any kind of outage.

We Know How to Handle Heavy Web Traffic

OpenWater uses multiple providers, including Amazon, Rackspace and Microsoft, to scale for heavy Web traffic. In addition, we monitor all servers in real-time to optimize resources in the data center. Even if your organization experiences a sudden spike in volume, your users will still experience great network and website performance.

The following information is intended for IT staff members of current or prospective OpenWater customers and covers the following:

- Where and How Data is Stored
- Who has Access to your Data
- Service Level Agreement and Monitoring
- PCI Compliance, Scanning and other Compliance (SAS-70, SOC-2)
- Backup Procedures and Continuity Plan
- Data Destruction Policy

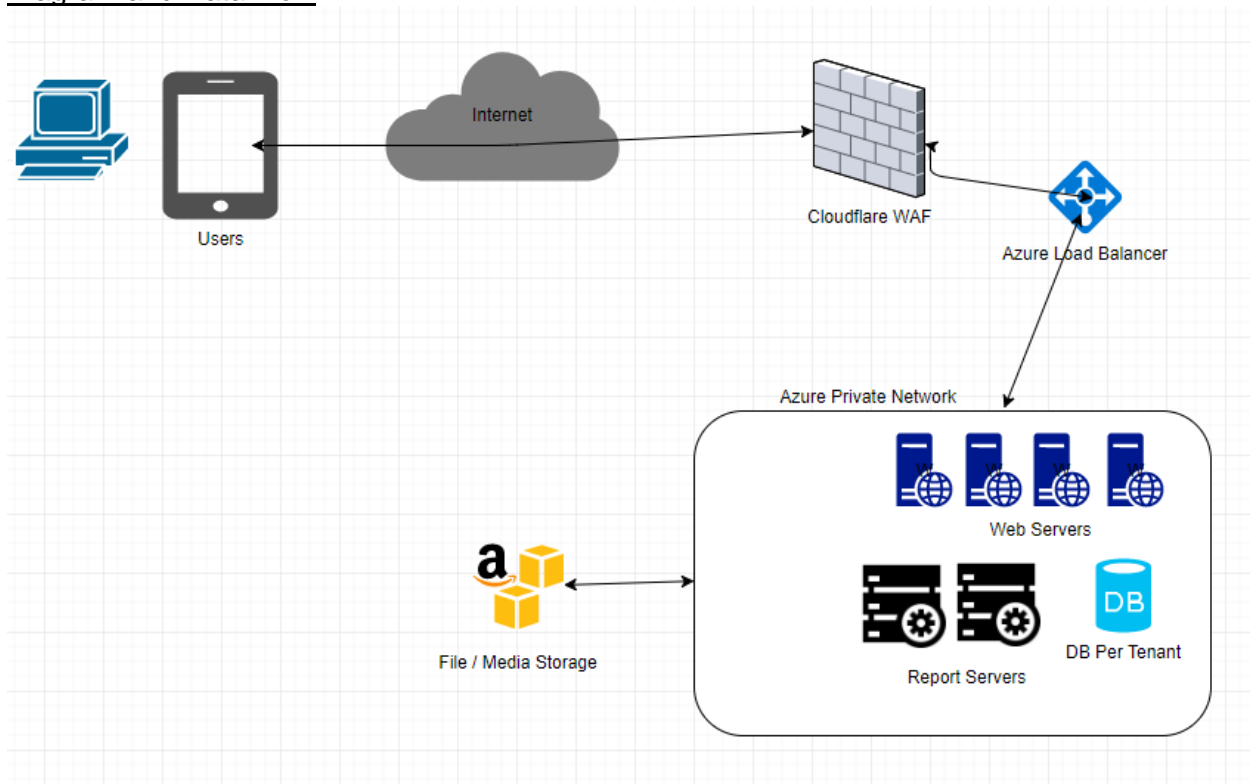
Where and How Data is Stored

The OpenWater Platform is a proprietary system built on Microsoft .NET technologies. Its basis is 100% custom and is not derived from a popular system (e.g. DotNetNuke). As such it is not vulnerable to threat vectors often in the news (e.g. WordPress, Drupal, DotNetNuke vulnerabilities).

The basis of the platform is Microsoft ASP.NET MVC with Entity Framework and is kept up to date. The system is built to avoid common web based security threats (database injection, cross site scripting, and cookie hijacking to name a few).

The system is a Multi-tenant, Single Database per Tenant Architecture.

Diagram and Data Flow



Data Flow:

- Public Internet users access OpenWater via a Cloudflare Firewall (TIs 1.2 Encryption)
- Cloudflare routes to Azure Load Balancer (TIs 1.2 Encryption)
- Access Granted to Web Facing Servers inside Azure Private Network (TIs 1.2 Encryption)
- Web Servers and Report Servers interface with 1 DB per Tenant (TIs 1.2 Encryption)
- Database stores form field information (Encrypted at Rest)
- All media files (videos and picture uploads) are stored in Amazon S3 (Encrypted at Rest)

Storage Locations

Data is stored in Microsoft Azure Regions depending on customer origin (your organization's location). Data includes all user information including name, email, and collected forms information.

United States	US East 2
Canada	Canada East
Europe	Ireland
Australia	Australia West
All Other Countries	US East 2

All uploaded files (videos / pictures) are stored on Amazon S3 US East 1 Region and are served via a point of presence as close to the end user as possible.

Who Has Access to Your Data

OpenWater processes your data. This data is only used for purposes of providing customer service and support. OpenWater will **never** sell this data to third parties, nor provide it to third parties for any reason other than compelled disclosure in accordance with Section 8.3 of the Agreement and the DPA.

OpenWater staff that are not affiliated with providing service and support will **never** have access to your private data.

The following stakeholders have access to OpenWater data:

Stakeholder	Access
OpenWater General Staff	<p>OpenWater General Staff including Sales, Marketing and internal operations have access to the public website of your organization.</p> <p>General staff are no different than the general public and can only see and view information that has been made publicly available by your organization.</p>
OpenWater Implementation and Support Staff	<p>The OpenWater implementation and support staff is separated into small teams of 3 to 5 individuals who work on batches of customers.</p> <p>You will be designated a primary support representative who is managed by a support team lead. In addition to these two individuals OpenWater may assign 1 to 2 additional members to service this team.</p> <p>All of these support members will be able to access your information.</p> <p>All staff members on these teams are from the United States or Canada and undergo background checks prior to being given access.</p> <p>All of their access is logged and monitored.</p>

	If you opt out of customer service, no implementation or support staff member will have access to your information.
OpenWater Senior Technical Staff	OpenWater Senior Technical Staff has access to backups of your data. These backups are used to reproduce issues for remediation or to recover from a data loss event (human error or system error). All access to backup data is logged and monitored.
Your Organization Staff	Administrators designated by your organization will have the ability to access information hosted by OpenWater on behalf of your organization. The platform supports two levels of access control: All Access or Designated Access per program hosted by OpenWater.

Service Level Agreement and Monitoring

OpenWater is committed to a 99.9% Uptime Service Level Agreement (SLA) per month.

The platform uptime is monitored by Pingdom and a historical record can be viewed at <https://openwater.statuspage.io/>

The system is monitored 24 / 7 / 365 days per year. System outages and partial outages are reported on the status page and customers can subscribe to updates.

System outages typically occur on days when many other systems across the Internet are facing issues. Notably, Amazon S3 and Microsoft Azure based solutions, which are relied on by millions of organizations, including OpenWater, will fail to operate during an outage.

The OpenWater Status Page is resilient to an outage by a single cloud provider and is the best source of up-to-the-minute information.

The historical record shows OpenWater exceeds the 99.9% uptime mark. Since tracking began in 2013, we have noticed there are typically one to two events per year that last longer than one hour, and no events that have lasted longer than 4 hours.

While we cannot control short term changes in the cloud, we are committed to providing a service level of 99.9% and have structured our system in a way that would allow us to move to another provider should our current vendor face prolonged outages or issues.

Our traffic doubles each year, and we currently service over one million users per month. Response time has remained consistent at sub-1 second per page load.

In the event of a service disruption, our priority is to first restore normal services. Credits for service are not provided, however, should OpenWater fail to meet the 99.9% service level agreement three times in a twelve month period, the customer will have the right to terminate the agreement early and receive a prorated refund of the paid portion of the license fees.

During a Live Virtual Conference, our SLA is extended to cover both OpenWater uptime and general internet disruptions that may cause widespread issues in accessing streaming platforms such as Zoom or GoToWebinar. If an outage exceeds 20 minutes in a single calendar day during a live virtual conference, the customer may choose:

- a. to cancel the remaining day's events and to reschedule them for a subsequent day in the next 365 days at no additional charge.

b. to upload pre-recorded / on-demand content for the sessions that were disrupted and have hosting for the next 365 days at no additional charge.

c. to receive a refund of the technology costs (software license) and not reschedule. With this option no consulting / staff charges will be refunded. The refund is calculated at a rate of 10% of the license fees incurred per hour or partial hour of disruption. (1 Hour and 1 minute would incur a 20% refund) up to a maximum of 100% of the license fees paid.

Encryption

Data is transmitted using TLS 1.2 encryption. Data is encrypted at rest. Microsoft Azure Key Management is used to ensure security of encryption keys.

Consent management tools

1. OpenWater allows you to define a Consent Message that appears when a user first accesses the OpenWater platform. If you enable this feature, all users must agree to your consent message before accessing the platform. If you choose to not use this feature, you must include a checkbox during account creation in OpenWater that requests consent to data collection. This checkbox may not default to opt-in.
2. OpenWater allows you to list a consent message on all outgoing emails from the OpenWater platform. This message will appear in the footer of emails and include a link to allow the user to deny future contact from the OpenWater platform. OpenWater recommends use of this feature to allow for rapid consent management by the end-users.

PCI Compliance, Scanning and other Compliance (SAS-70, SOC-2)

OpenWater undergoes PCI Compliance which covers components related to its payment gateway handling. By use of the Microsoft Azure Platform, OpenWater is able to inherit security controls for many other popular audits.

Document	How to Access
PCI Compliance SAQ-D, AOC version 3.2	Request via your OpenWater Support Representative
PCI Compliance Daily Scan Results (Scans Provided Daily by TrustGuard)	Request via your OpenWater Support Representative
ISO 9001, ISO 20000-1:2011, ISO 22301, ISO 27001, ISO 27017, ISO 27018 FEDRAMP HIPAA SAS-70 SOC 1, SOC 2, SOC 3	Request via Microsoft Service Trust Center

Backup Procedures and Continuity Plan

OpenWater maintains backups to recover from data loss caused by human error or system error in the following manner:

Backup Type	Purpose	Retention	Time to Restore	Cost
Secondary Database Copy on an alternate Azure Region	Fail-Over in the event of prolonged outage > 8 hours	N/A	15 Minutes to Enact Failover	N/A
Nightly Backup of Database	Recovery from Human Error	365 Days	1-2 Business Days	\$250 for urgent restore due to human error No charge for standard restore or if data loss occurred due to system error
Point and Time Restore of Database	Recovery from Human Error or System Issue with 1 minute granularity on data	7 Days	1 - 2 Business Days	N/A (No rush service available)
2nd Nightly Backup of Database on Alternate Data Center	Recovery from Catastrophe / Loss of Data Center	365 Days	N/A	N/A

Continuity Plan

OpenWater is designated a High Priority, but not Mission Critical System. Our continuity of operations plans fails over to a secondary environment after an 8 hour period. In the event of an outage, the end users of the platform should be asked to return after the outage to complete their applications or enter their review scores. OpenWater suggests organizations include a policy that states a deadline may be extended in the event of a prolonged system outage.

OpenWater has a strong historical record with an uptime exceeding 99.9%, with no prolonged outages, however organizations that rely on 100% uptime should request a dedicated continuity plan.

In the event of an outage, the plan is as follows:

1. An outage is detected within two minutes by Pingdom and text messages are sent to operations staff.
2. An outage exceeding four minutes will trigger self-healing operations
 - a. Each server node will begin a reset until all server nodes are restarted

3. An outage exceeding five minutes will result in an alert to our Status Page
4. A prolonged outage greater than 5 minutes will include one update to our status page each hour until the problem is resolved and normal operations are resumed.
5. If no resolution has been found within 4 hours, preparation to swap to the failover environment will begin.
 - a. If a resolution has been found, then the senior member of the ops team will decide to wait for resolution or to swap to the failover environment
 - b. If no resolution has been found within 8 hours of the initial outage, a failover swap will occur
 - c. The operations plan is to rely on the primary environment, time of outage (e.g. weekend or weekday, summer slow season vs busy fall / winter) may shift the final decision to swap to failover sooner than 8 hours or longer than 8 hours
6. In the event of a total data center loss, OpenWater will be able to restore customer databases that are up to 24 hours stale to a new data center on any popular cloud provider (Amazon Web Services, Azure, Google Cloud Platform). In the event of such a catastrophe, OpenWater will communicate publicly with all customers the prioritization plan.
 - a. Customers that have been active within the last 24 hours will take priority, Up to 24 hours of data may be lost, and Up to 5 days may be required until full restoration of Operations.

Data Destruction Policy

By default OpenWater retains all backups for a period of 365 days for all customers including those that are no longer using the service.

As a customer of OpenWater you may download your data at any time to common formats including CSV, XLS and JSON. All attached media can be downloaded using our Bulk Downloader or via DropBox.

If you are no longer a customer, upon request by you made within 10 days after the termination or expiration of your Agreement, OpenWater will make your data available to you for export or download. After that 10-day period, OpenWater will have no obligation to maintain or provide your data, and will thereafter delete or destroy all copies of your data in OpenWater's systems, unless legally prohibited.

If you are no longer a customer and wish to have OpenWater destroy your data, please send a certified letter signed by an Officer or appropriate authorized representative of your organization to:

OpenWater Software, LLC
Data Security Department
1800 Diagonal Road
STE 600
Alexandria, VA 22314

In this letter include a secret phrase.

OpenWater will verify your request by

1. Sending an email to the work email address of this user
2. Follow up Phone Call on a Recorded Line
3. Confirmation of Secret Phrase
4. Confirmation of additional data (e.g. method and date of payment to OpenWater)

Upon verification, OpenWater will send a confirmation email to two additional staff at your organization.

Assuming there are no concerns, OpenWater will purge all data, including backups for your organization and provide a certificate of destruction.