



OMNIDUCT STANDARD TERMS AND CONDITIONS

[Capitalized terms not defined below have the meaning as set forth in the Service Agreement]

1. **INDEPENDENT CONTRACTOR STATUS.** OmniDuct hereby declares that OmniDuct is engaged in an independent business and OmniDuct will perform the Services as an independent contractor and not as the agent, employee or servant of the Client. OmniDuct has and hereby retains the right to exercise full control and supervision of the employment, direction, compensation and discharge of all persons, if any, assisting OmniDuct. OmniDuct agrees that it will be solely responsible for all matters relating to payment of OmniDuct's employees, including compliance with Social Security, withholding and all other regulations governing such matters.

2. **INDEMNIFICATION.**

2.1 **Indemnification by the Client.** Except for the actions noted in Section 2.2 below, the Client hereby agrees to indemnify, defend and hold harmless OmniDuct, its trustees, directors, officers, employees and agents and their respective successors and assigns (the "OmniDuct Indemnified Parties") against any and all losses, costs, damages, claims, expenses or liabilities, including attorney's fees, incurred by the OmniDuct Indemnified Parties arising out of or related to the performance of the Services by OmniDuct in accordance with the terms and conditions of this Agreement. Notwithstanding the foregoing, OmniDuct shall remain liable for errors or deficiencies in the Work Product arising out of its intentional malfeasance in the performance of the Services. In no event shall OmniDuct be deemed to be providing any warranty of any nature regarding the products that are the subject of the Services.

2.2 **Indemnification by OmniDuct.** Subject to the limitations in Section 2.3, OmniDuct hereby indemnifies the Client against any and all loss, costs, damages, claims, expenses or liabilities arising from OmniDuct's obligations and duties as set forth in this Agreement arising out of OmniDuct's intentional malfeasance, not otherwise covered by insurance proceeds received by the Client.

2.3 **Limitation of Damages.** In no event shall the OmniDuct Indemnified Parties be liable under this Section 2 in an amount in excess of the amount paid by the Client to OmniDuct for the Services, or \$500, whichever is higher. Neither the Client nor OmniDuct shall be liable to the other for any punitive or exemplary damages or any incidental or consequential damages including, without limitation, any lost opportunity costs, loss of use, loss of rights from untimely completion, business interruption, lost products or lost profits any of which result from the Services performed under this Agreement.

3. OWNERSHIP AND LICENSING OF INTELLECTUAL PROPERTY. Intellectual property developed and owned by each Party prior to the date of this Agreement shall remain the property of such Party.

4. CONFIDENTIALITY. OmniDuct agrees that it will not use or disclose Client's confidential information except as is necessary for OmniDuct to perform under this Agreement.

5. GENERAL PROVISIONS.

a) Notices. All notices pertaining to this Agreement shall; (i) be in writing; and (ii) shall be transmitted either by email, facsimile, overnight mail, personal hand delivery or through the facilities of the United States Post Office, certified or registered mail, return receipt requested. The last know addresses of the respective Parties shall be the places where notices shall be sent, unless written notice of a change of address is given.

b) Binding Effect. Each and every covenant, term, provision and agreement herein contained shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors, assigns and legal representatives and shall survive the termination of this Agreement where appropriate to carry out the terms thereof.

c) Parties in Interest. Nothing in this Agreement shall confer any rights or remedies under or by reason of this Agreement on any persons other than the Parties and their respective successors and assigns nor shall anything in this Agreement relieve or discharge the obligation or liability of any third person to any party to this Agreement, nor shall any provision give any third person any right of subrogation or action over or against any party to this Agreement.

d) Attorney's Fees. In the event that any legal, declaratory, self-help, or equitable action or arbitration or any other action not considered to be a legal or equitable action is commenced between the Parties hereto or their personal representatives concerning any provision of this Agreement or the rights and duties of any person in relation thereto, the prevailing Party shall be entitled, in addition to such other relief that may be granted, to a reasonable sum for their attorney's fees and any other costs and expenses relating thereto.

e) Governing Law. The validity, interpretation, construction and performance of this Agreement shall be controlled by and construed under the laws of the State of California. In the event of any litigation arising out of any dispute in connection with this Agreement, the Parties hereby consent to the jurisdiction of the California courts with venue in Orange County, California.

f) Assignment. Except as noted herein, neither this Agreement nor any duties or obligations hereunder shall be assignable by OmniDuct without the prior written consent of the Client, which may be withheld in the reasonable discretion of the Client.

g) Arbitration. Any dispute that arises between the Parties to this Agreement shall be subject to arbitration in accordance with the then current Arbitration rules of the American Arbitration Association. The arbitration shall take place in California before an arbitrator chosen by the Parties. If the Parties cannot agree on an arbitrator then each Party shall pick an arbitrator and these two arbitrators shall agree upon a third arbitrator who shall be the sole arbitrator to decide the dispute. The decision of the arbitrator regarding any dispute shall be conclusive, final and binding upon the Parties, their heirs, executors, successors and assigns as applicable. The cost of arbitration including the administrative fees, fees for a record and transcript, and any arbitrator's fees shall be borne by the Parties to the arbitration pursuant to the allocation of such expenses in the sole discretion of the arbitrator. In the event of any arbitration action arising out of any dispute in connection with this Agreement, the Parties hereby consent to conduct said arbitration in Orange County, California.

h) Entire Agreement. This Agreement contains the entire Agreement between the Parties hereto and supersedes any prior written or oral agreement between the Parties concerning the subject matter contained herein. There are no representations, agreements, arrangements or understandings, oral or written between the Parties hereto, relating to the subject matter contained in this Agreement, which are not fully expressed herein.

[END OF STANDARD TERMS AND CONDITIONS]