

OhmniLabs, Inc.
TERMS AND CONDITIONS OF SALE

These terms and conditions of sale (the “Terms”) control the terms and conditions of sales between OhmniLabs, Inc. and the purchaser or licensee (“Customer”).

Capitalized terms, apart from those specified above, used in these Terms are found in Section 15 of these Terms.

1. TERMS AND CONDITIONS; ORDERS; CHANGES; SOFTWARE; PRICE; DELIVERY

1.1 Terms Have Precedence. The Terms will be the only terms and conditions that apply to any Order accepted by OhmniLabs from the Customer. Any terms and conditions which are in addition to or in conflict with these Terms in an Order or other forms shall not apply to any sale of Products. Therefore, OhmniLabs will accept an Order solely on the Customer’s express understanding and agreement that the Terms will be the only terms and conditions applicable to an Order, and OhmniLabs hereby objects to any other terms and conditions. Notwithstanding the foregoing, any terms in these Terms that conflict with any written, mutually signed agreement between the Customer and OhmniLabs shall be overridden to the extent of such a conflict. Notwithstanding any other terms and conditions in other documents other than such an agreement, all Products, Software or OhmniLabs Services purchased by the Customer from OhmniLabs shall be governed by these Terms.

1.2 Purchase Order Contents. The Customer agrees that the Customer shall submit any written order subject solely to the Terms. Each Order (Purchase Order, signed quote, or credit card order) submitted by the Customer to OhmniLabs shall recite (a) the prices for the Products or Software; (b) the quantities of the Products or Software; (c) the date; (d) the delivery and billing addresses; (e) a Customer contact name and phone number; (f) as the Customer may elect, a unique number assigned by Customer’s accounts payable department; (g) for each individual Product, the delivery date and the location for delivery of specific quantities of each Product identified in the Order; and (h) for any Software licensed on a per-user basis, the number of users of such Software. Any term other than those listed in this Section 1.2(a)-(h) (or any other term expressly permitted in these Terms) in an Order that may be inconsistent with or in addition to these Terms shall be void and of no force or effect unless accepted by OhmniLabs in writing.

1.3 Acceptance. At OhmniLabs’ sole discretion, OhmniLabs will accept or reject an Order at OhmniLabs’ offices in Santa Clara, CA, USA. OhmniLabs will use good faith efforts to confirm acceptance or rejection of Orders promptly upon receipt. If OhmniLabs accepts an Order, OhmniLabs shall acknowledge that Order and confirm the delivery dates or propose new delivery dates to the Customer for all quantities of each of the Products identified in the Order.

1.4 Changes. OhmniLabs reserves the right to make any change in the specification of the Products or Software which does not materially affect the installation, performance or price thereof; any such change shall not invalidate any Order placed with OhmniLabs or impose any liability on OhmniLabs. If OhmniLabs ceases to manufacture any Products after OhmniLabs’ acceptance of an Order covering such Products, OhmniLabs shall give notice of the fact in writing to the Customer (but shall not be liable for any loss or damage occasioned thereby to the Customer), whereupon the Customer will have the option, to be exercised by written notice to OhmniLabs within ten (10) days of the date of such notice, either to take equivalent Products (if available from OhmniLabs) or to cancel the affected Order without further liability to OhmniLabs with respect to such discontinued Products under the

affected Order(s). If the Customer has not exercised such option within such ten (10) day period, the affected Order shall either (i) continue in effect, with any equivalent Products, if available from OhmniLabs, substituting for the discontinued Products, or (ii) shall be deemed terminated to the extent of such discontinued Products.

1.5 Orders Not Cancellable. Once an Order is placed with OhmniLabs, the Customer may not cancel such Order.

1.6 Software Licensed Not Sold. The Customer agrees and acknowledges that all Software is licensed and not sold, and that all use of “purchase” or “sell” (and their respective correlates) in connection with Software shall be deemed to mean “license” (and its correlates). Other than as specified in this Section 1.6 and in Section 3.1, nothing in this Agreement shall be deemed to provide to the Customer any right, title or interest in any Software.

1.7 Price. The Customer agrees to pay OhmniLabs the prices for Products and the fees for OhmniLabs Services as set forth in an Order accepted by OhmniLabs. Prices in each Order shall be the prices included in the applicable quote to which these Terms are attached, unless otherwise agreed in writing by OhmniLabs and Customer. Except as otherwise provided for in these Terms, all such prices or fees shall be nonrefundable. OhmniLabs may change the prices for Products or fees for OhmniLabs Services at any time prior to quoting its prices to the Customer. Unless otherwise stated in writing by OhmniLabs, (a) all prices are quoted in United States dollars; (b) all quotations expire thirty (30) days after the date of such quotation; and (c) all amounts are payable in United States dollars by credit card or check or wire transfer to the account designated by OhmniLabs. The foregoing prices or fees include the licenses provided for in Section 3.

1.8 Taxes. All prices quoted by OhmniLabs are exclusive of federal, state, local, excise, value-added, use, sales, property (ad valorem) and similar taxes or duties now in force or hereafter enacted, unless otherwise stated. The Customer agrees to pay all taxes, fees or charges of any nature whatsoever imposed by any governmental authority on or measured by the transaction between the Customer and OhmniLabs, in addition to the prices quoted or invoiced. In the event that OhmniLabs is required to collect the foregoing, such amounts will be paid by the Customer unless the Customer provides OhmniLabs with a valid tax exemption certificate authorized by the appropriate taxing authority.

1.9 Delivery. All shipments to the Customer will be EXW OhmniLabs’ facility (Incoterms 2010). Unless the Customer specifies a carrier to OhmniLabs in writing, OhmniLabs will select the carrier, but such carrier will not be the agent of OhmniLabs. Subject to the next sentence and to the right of OhmniLabs to stop delivery of Products in transit, title to and risk of loss or damage for all Products will pass to the Customer upon delivery to a carrier for shipment to the Customer. Any date(s) or time(s) quoted for delivery of the Products by OhmniLabs are estimates only and OhmniLabs shall not be liable for failure to deliver the Products on or within such date(s) or time(s) nor shall the Customer be entitled to reject any shipment of the Products or to treat any Order as repudiated in the event of such failure. OhmniLabs will make best efforts to meet the quoted delivery dates. OhmniLabs may ship the Customer’s ordered Products in one or more installment(s), unless the Customer make a specific prior written request that OhmniLabs not make partial shipments under the Customer’s Order. Where the Products are delivered in installments, each delivery shall constitute a separate contract and failure by OhmniLabs to deliver any one or more of the installments in accordance with these Terms or any claim by the Customer in respect of any one or more installments shall not entitle the Customer to treat the Order as a whole as repudiated. The Customer must report any discrepancies in quantities or type of Products received in a shipment as compared to the applicable invoice,

within seven (7) days of the Customer's receipt of such shipment or such shipment shall be deemed to comply with its invoice.

1.10 Terms of Payment. Customers will pay for ordered products prior to shipment. If OhmniLabs has approved credit terms for the Customer's purchase, OhmniLabs will grant net thirty (30) day payment terms to the Customer. Such payment terms require that the Customer pay the purchase price in full not later than thirty (30) days after the date of OhmniLabs' invoice, which OhmniLabs will issue on its shipment of Product or Software to the Customer. The Customer agrees to make payment of the applicable prices and other amounts due, by wire transfer of immediately available funds to OhmniLabs' advised bank account or by such other method as OhmniLabs may request. OhmniLabs also reserves the right, in its sole discretion, at any time to request the immediate provision of a standby letter of credit, drawn upon a mutually agreeable bank, with a value equal to the amount of credit extended by OhmniLabs to the Customer. If payment of any amount invoiced is not made by the due date, OhmniLabs shall, in addition to other rights and remedies under these Terms, be entitled to: (i) charge interest on the outstanding amount at the rate of 2% per month, accruing daily, or the highest rate allowed by applicable law, if lower; (ii) require payment by the Customer in advance of delivery of any undelivered Products ordered under the affected or any other Order; (c) refuse to make delivery of any undelivered Products or Software ordered under the affected or any other Order, and without incurring any liability whatsoever to the Customer for non-delivery or any delay in delivery; or (d) terminate the applicable Order. The Customer shall reimburse OhmniLabs for all costs and expenses incurred by OhmniLabs in connection with the collection of overdue amounts, including attorneys' fees. Time is of the essence with respect to all payments hereunder.

1.11 Purchase Money Security Interest. The Customer agrees that its Order constitutes a security agreement, under which the Customer grants to OhmniLabs a purchase money security interest in Product or Software purchased hereunder for the amount of its purchase price, and OhmniLabs hereby reserves such security interest. In order to perfect OhmniLabs' security interest, the Customer agrees that (i) the Customer will execute any financing statements (e.g., UCC-1 forms) and amendments and supplements thereto, or other instruments that OhmniLabs, as a secured party, desires to file in compliance with the commercial code of any state, or any other law of the United States, and (ii) OhmniLabs may file such financing statements and the Customer's Order, or copy of the Customer's Order, with the appropriate governmental authorities at any time, alone or with other documents that OhmniLabs determines to be necessary or desirable to perfect or protect the security interest created hereby. Payment in full of the purchase price of any Product or Software will release the security interest on that Product or Software, as the case may be. The Customer agrees that, until such time as the Customer has paid OhmniLabs all amounts due with respect to such Products: (A) if the Products are resold or otherwise disposed of by the Customer, the Customer will ensure that the entire proceeds of the sale are held on behalf of OhmniLabs and shall not be mixed with any other monies or paid into an overdrawn bank account and shall at all times be identifiable as monies belonging to OhmniLabs; (B) the Customer shall be obliged to keep the Products free from the rights of Third Parties or Affiliates of the Customer and shall not encumber, pledge or grant any security interest in or to the Products; and (C) if the Customer fails to make payments when due, OhmniLabs retains the right to recover the Products from the Customer's premises (and for this purpose may enter into the Customer's premises), at the Customer's expense. Nothing in this Section 2.5 shall confer any right upon the Customer to return or otherwise reject the Products.

2. LICENSE

2.1 License to Software. Subject to these Terms, OhmniLabs hereby grants to Customer a nonexclusive, non-sublicensable, nontransferable (except as set forth in Section 14.2 below) license to use the Software, solely for the Customer's internal business purposes as further described in Section 3.2 below. Customer's license to use the

Software shall be limited to the number of users or other metrics set forth in the applicable Purchase Order between the Customer and OhmniLabs, and for which the Customer has paid or agreed to pay to OhmniLabs all applicable fees. Customer shall be required to agree to a click through end user license agreement in order to access and use the Software, which end user license agreement shall be subject to these Terms in all respects.

2.2 Permitted Use. The Customer shall use the Software solely as embedded in, for execution on, or in connection with OhmniLabs Products owned or leased by Customer and used for Customer's internal business purposes and only during the term of the license to such Software. For all Software downloaded or otherwise obtained by Customer, Customer shall not copy or duplicate the Software, or any portion thereof, for any other purpose other than for its own internal business purposes. For all Software accessed remotely via hosted services, no download or copying or duplication of the Software is permitted outside of normal functionality of the Software when in operation. No other uses of the Software or services are authorized by these Terms and any unauthorized use of the Software or services shall be a violation of these Terms. No right or license is granted under these Terms for the use of the Software, directly or indirectly, for any other purpose, with any products that compete with the Products, or for the benefit of any Third Party.

2.3 License to Documentation. Subject to these Terms, OhmniLabs hereby grants to the Customer a non-exclusive, non-sublicensable license to use and reproduce the Documentation for the Customer's internal purposes only and only during the term of the license to such Software.

2.4 No Modification or Reverse Engineering. The Customer shall not modify or alter the Software or Products, create derivative works of the Software or Products, reverse engineer the Software or Products, translate the Software or Documentation or reduce the Software by any other means to a human-perceivable form. If the foregoing restriction is not enforceable under applicable law, then the Customer shall first provide OhmniLabs with a reasonable opportunity to provide the desired revisions to the Software, Products or Documentation on commercially reasonable terms and shall only engage in such prohibited activities to the extent applicable law voids the foregoing restrictions. The Customer shall not use or permit the Software or Products to perform services for Third Parties, whether on a service bureau or time sharing basis or otherwise, without the express written authorization of OhmniLabs. The Customer agrees not to disclose, provide or otherwise make available trade secrets contained within the Software, Products or Documentation in any form to any Third Party without the prior written consent of OhmniLabs on a case-by-case basis. The Customer shall implement reasonable security measures to protect such trade secrets. To the extent required by law in order for OhmniLabs to enforce this Section 2.4, at Customer's written request, OhmniLabs or an authorized OhmniLabs reseller may provide the Customer with the interface information needed to achieve interoperability between the Software and another independently created program, on payment of the applicable fee, if any. The Customer shall observe strict obligations of confidentiality with respect to such information and shall use such information in compliance with any applicable terms and conditions, including without limitation reasonable confidentiality restrictions, upon which OhmniLabs or its authorized resellers makes such information available.

2.5 Ownership. Title to, and ownership of, and all proprietary rights (including intellectual property rights) in, the Software and Documentation, and all intellectual property rights in the Products and OhmniLabs Services, and each copy of any of the foregoing, shall remain at all times with OhmniLabs or its Third Party licensors. The Customer may not (i) sell, transfer, lend or otherwise make available, or disclose to Third Parties, the Software in any manner not expressly permitted by these Terms, or (ii) remove or alter any copyright or other proprietary notice contained therein. The Customer shall include on each copy of the Software all copyright or other proprietary

notices of OhmniLabs or its licensors contained on such Software. The Customer shall not remove any proprietary or cautionary notices provided by OhmniLabs on any Product.

2.6 Branding. The Customer shall not have the right to rebrand any of the Products nor to remove any of the proprietary markings on the Products as supplied by OhmniLabs hereunder.

2.7 U.S. Government End Users. The Software is provided with Restricted Rights and qualifies as “commercial items” consisting of “commercial computer software” and “computer software documentation” as such terms are defined and used at FAR (48 C.F.R.) 2.101 and FAR 12.212. Use, duplication or disclosure by the government is subject to restrictions as set forth in subparagraph (c)(f)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c) (1) and (2) of the Commercial Computer Software-Restricted Rights at 48 C.F.R. S:52.227-19, as applicable.

3. PRODUCT USES

3.1 No Hazardous Uses. PRODUCTS ARE NOT AUTHORIZED FOR USE IN CRITICAL SAFETY OR OTHER APPLICATIONS WHERE ANY FAILURE MAY REASONABLY BE ANTICIPATED TO RESULT IN BODILY INJURY, LOSS OF LIFE OR CATASTROPHIC DAMAGE TO PROPERTY. IF THE CUSTOMER USES OR SELLS THE PRODUCTS FOR USE IN ANY SUCH APPLICATIONS, THE CUSTOMER ACKNOWLEDGES THAT SUCH SALE OR USE IS AT THE CUSTOMER’S SOLE RISK. THE CUSTOMER SHALL INDEMNIFY, DEFEND AND HOLD OHMNILABS AND ITS AUTHORIZED RESELLERS AND SUPPLIERS HARMLESS FROM AND AGAINST ANY AND ALL LIABILITIES AND COSTS ARISING OUT OF OR IN CONNECTION WITH SUCH SALE OR USE.

3.2 Products Uses are at Customer’s Risk. The Customer’s use of the Products is entirely at the Customer’s risk. Without limiting the foregoing, any suggestions or advice given by OhmniLabs or its employees or agents as to the application or use of the Products or OhmniLabs Services which is not contained in the written operating instructions provided by OhmniLabs is acted upon by the Customer entirely at the Customer’s own risk.

4. HOSTED SERVICES

4.1 Hosted Services. Hosted Services are typically are in the cloud and delivered over the network. Select Hosted Services may be necessary for use of the Products. Required Hosted Services may be bundled with a product, subscription or service or sold separately, as determined by OhmniLabs in its sole discretion from time to time.

4.2 Renewals. Purchased Hosted Services shall commence on the initial activation of the Product. Required Hosted Services will automatically renew for successive one (1) year periods unless the Customer provides OhmniLabs with sixty (60) days’ prior written notice of non-renewal on a Product-by-Product basis.

4.3 Service Levels. The Hosted Services will be provided in material conformance with the description and service levels set forth in Section 17.

5. INFRINGEMENT INDEMNIFICATION

5.1 Infringement. Subject to Sections 5.2 and 5.3, OhmniLabs agrees, at its own expense, to indemnify, defend and hold the Customer harmless against any Third Party claim, suit, action, losses, liabilities, damages, costs and expenses (including reasonable attorneys' fees) awarded by a court of applicable jurisdiction against the Customer to the extent that it is based on any claim that the Documentation or the Products (or any part thereof), when used as outlined in the Documentation, infringe any U.S. patent, copyright, or trademark of any Third Party, provided that OhmniLabs is: (a) notified promptly in writing of any such claim or action related thereto; (b) given the right to control and direct the investigation, preparation, defense and settlement of the claim or action; and (c) given the Customer's reasonable assistance and cooperation for the defense of the same. OhmniLabs agrees to pay any final award of damages assessed against the Customer resulting from such claim or action, including any awarded costs and attorneys' fees, or any settlement amount agreed to by OhmniLabs. OhmniLabs will not be responsible for any settlement it does not approve of in writing.

5.2 Remedies. Following notice of a claim or any facts which may give rise to a claim of infringement, OhmniLabs may, in its sole discretion and at its option, (a) procure for the Customer the right to continue to use the affected Products, or (b) replace or modify the affected Products to make them non-infringing, so long as the functionality is materially unchanged. If OhmniLabs, in OhmniLabs' sole discretion, determines that it is not commercially reasonable to perform either of these alternatives, OhmniLabs shall have the option to accept the return of the allegedly infringing Products and refund the fees paid by the Customer for such allegedly infringing Products, less depreciation for use assuming straight line depreciation over a period of five (5) years commencing upon delivery of the applicable Products.

5.3 Exclusions. In no event will OhmniLabs have any obligations under this Section for any claim or action to the extent the claim or action results from (a) an Excluded Item if such a claim would not have arisen but for the Excluded Item; or (b) use of other than OhmniLabs' most current release of the Products or Software if the claim or action would have been avoided by use of the most current release, provided the Customer is given an opportunity to use such most current release for no additional fee.

5.4 NO OTHER REMEDIES. THE FOREGOING IN THIS SECTION 7 STATES OHMNILABS' ENTIRE LIABILITY AND THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT.

6. LIMITED WARRANTIES AND DISCLAIMERS

6.1 Warranties. OhmniLabs warrants that (i) for a period of one year following delivery, the hardware in the Products will, when used in accordance with the Documentation, function substantially in the manner described in the Documentation. OhmniLabs does not warrant that the Software or any portion thereof are error or bug free, or that use of the Software will be uninterrupted.

6.2 DOA Products. If a Product is DOA, as determined by OhmniLabs help desk, during the applicable warranty period under Section 7.1, then the Customer may return the Product to OhmniLabs for a replacement Product at no additional charge, subject to the process set forth in this Section 8.2.a. The replacement Product will

be shipped to the Customer as soon as possible. The DOA Product must be received by OhmniLabs within thirty (30) business days of the Help Desk designation of a DOA, or the Customer will be charged the full retail price for the replacement Product.

6.3 Shipment of DOA and Replacements. OhmniLabs will pay freight costs to (i) ship any DOA Products back to OhmniLabs and (ii) ship any replacement OhmniLabs Products to the Customer, at normal non-expedited shipping rates. If any DOA Product is returned without fault (as determined by OhmniLabs in its reasonable discretion), the Customer shall pay to OhmniLabs all shipping costs associated with the allegedly DOA Product and the applicable replacement Product and the full retail price of such replacement Product.

6.4 Warranty repairs. If the product is installed and working and then fails within the warranty period, as determined by OhmniLabs help desk, OhmniLabs will either ship replacement parts with instructions or require that the failed product be returned to OhmniLabs factory for repair. Customer pays for shipment to OhmniLabs, OhmniLabs will pay for shipping back. Repair times are usually less than a week after the product has been received by OhmniLabs.

6.5 SOLE REMEDY. THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND OHMNILABS' ENTIRE LIABILITY FOR BREACH OF ANY WARRANTY, SHALL BE (i) CORRECTION OF THE WARRANTED NONCONFORMITY IN THE SOFTWARE REPORTED TO OhmniLabs WITHIN THE WARRANTY PERIOD, AND (ii) REPAIR OR REPLACEMENT OF DEFECTIVE HARDWARE THAT IS RETURNED TO OhmniLabs WITHIN THE WARRANTY PERIOD; PROVIDED, HOWEVER, THAT IF OhmniLabs IS UNABLE TO CORRECT A WARRANTED NONCONFORMITY IN THE SOFTWARE, OhmniLabs MAY, AT ITS OPTION AND WITHOUT LIABILITY TO THE CUSTOMER, TERMINATE THE LICENSE WITH RESPECT TO THE NON-CONFORMING SOFTWARE AND REFUND THE FEES PAID BY THE CUSTOMER FOR USE OF SUCH NON-CONFORMING SOFTWARE AND ANY PRODUCT RELIANT ON SUCH SOFTWARE, REDUCED BY AMORTIZING THE APPLICABLE AMOUNTS OVER A THREE (3) YEAR PERIOD FROM THE PURCHASE OF THE APPLICABLE SOFTWARE OR PRODUCT (SUCH THAT NO AMOUNT IS REFUNDED AFTER THREE (3) YEARS). All replaced parts become the property of OhmniLabs. Replacement parts may be new or equivalent.

6.6 Exclusions. OhmniLabs shall not be responsible under this warranty for (i) an Excluded Item, (ii) any Product which is damaged by liquid spills, or (iii) any problem or nonconformity arising from the use of Third Party software, hardware or other equipment not purchased from or through OhmniLabs or authorized by OhmniLabs or provided or supplied by OhmniLabs, and application modules excluding software required for routine operation.

6.7 Service Warranty. OhmniLabs warrants that any Services will be performed in a workmanlike and professional manner consistent with generally accepted industry practices. For any breach of the above services warranty, the Customer's exclusive remedy, and OhmniLabs' entire liability, shall be the re-performance of such deficient Services; and if OhmniLabs fails to re-perform such Services as warranted, the Customer shall be entitled to recover the fees paid to OhmniLabs for the deficient portion of such Services. The Customer must report any deficiencies in such Services to OhmniLabs in writing within thirty (30) days of performance of such Services in order to receive the above warranty remedies.

6.8 Scope. The warranties described in this Section 8 extend to only the direct Customer making the purchase from OhmniLabs and not to any further purchaser who purchases the Products, Software or Services, as the

case may be, from the Customer. Other than the warranties made in this Section 7, no OhmniLabs employee or representative is authorized to make any warranties regarding the Products, Software or Services, Customer agrees not to rely on any such warranties, and any such warranties made in violation of this Section 7.8 shall be of void and of no force and effect.

6.9 NO OTHER WARRANTIES. EXCEPT FOR THE EXPRESS LIMITED WARRANTIES PROVIDED IN THESE TERMS, OhmniLabs MAKES NO WARRANTIES WITH RESPECT TO THE PRODUCTS, SOFTWARE OR SERVICES, EACH OF WHICH ARE OTHERWISE PROVIDED “AS IS,” WITHOUT ANY WARRANTY WHATSOEVER. EXCEPT FOR THE EXPRESS LIMITED WARRANTIES PROVIDED IN THESE TERMS, OhmniLabs DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, AS TO ANY MATTER WHATSOEVER, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. THE FOREGOING STATES OHMNILABS’ ENTIRE LIABILITY AND CUSTOMER’S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF WARRANTY.

7. SUPPORT

7.1 Technical Support For each system purchased, OhmniLabs’ standard support service includes:

- Unlimited access to online support tools including remote diagnostics, manuals and FAQs.
- Unlimited tech support via email, between the hours of 9AM to 6PM PST (US time), Mon thru Fri, excluding Federal holidays.

7.2 Faulty Hardware replacement and repair

(a) If the Product is DOA, OhmniLabs will ship a new product replacement or part immediately after diagnosis. OhmniLabs covers all costs (replacement parts, packaging, shipping to the Customer and return shipping of the faulty part to OhmniLabs). The faulty part must be returned to OhmniLabs within thirty (30) days or the Customer will be invoiced for the replacement part (FRU) unless instructed otherwise in writing by Technical Support.

(b) Upon diagnosis of a hardware problem within the warranty period, except for DOAs, the customer shall return the product to OhmniLabs’ factory. Repairs will be made at no charge and the repaired robot will be shipped back at OhmniLabs’ expense. At OhmniLabs discretion, and with the customer’s agreement, OhmniLabs may ship a replacement part with installation to the Customer.

7.3 Updates and Upgrades for Software. OhmniLabs agrees to provide the Customer, at OhmniLabs’ expense, Updates with engineering changes to correct operational deficiencies and errors to the Software. OhmniLabs shall provide Updates of its then current Core Offering without additional charge. “Core Offering” shall mean the then-current standard features and functionality included with a Product sold to OhmniLabs’ end user customers generally without a separate charge. OhmniLabs shall also provide Upgrades during the Term. Upgrades may included additional functionality as well as corrections and may or may not require purchase. Updates and Upgrades shall be installed in accordance with OhmniLabs’ installation instructions. After the installation of any Update or Upgrade, OhmniLabs shall be relieved of any liability or continued responsibility with respect to any prior Software release to which the Update or Upgrade applies, other than the then immediately preceding release of

the Software. All Updates and Upgrades shall remain the sole and exclusive property of OhmniLabs, and shall be subject to OhmniLabs' license terms and conditions applicable to the Software.

7.4 New Add-On Applications. From time to time, OhmniLabs may develop new Software applications that add features or functionality, but are not part of the Core Offering and are subject to an additional charge. The Customer shall not be required to use or install any New Add-On Application. OhmniLabs does not warrant that a New Add-On Application will be compatible with the Customer's then current version of the Product; an update or upgrade may be required. All New Add-On Applications shall be subject to OhmniLabs' software license terms and conditions provided with such application.

7.5 Resolution of Problems. OhmniLabs shall use commercially reasonable efforts to respond to reported issues or defects (each, a "Problem") with the operation or use of the Products obtained by the Customer. OhmniLabs' response to a reported Problem will be dependent upon the severity of the Problem, and upon the Customer providing sufficient information for OhmniLabs to understand and recreate the Problem, and in accordance to OhmniLabs' internal support policies and procedures.

7.6 Reporting of Problems. Reports of Problems will be made to OhmniLabs Help Desk via OhmniLabs' website or via e-mail [at support@OhmniLabs.com]. In order to allow OhmniLabs to respond as effectively as possible to the Customer's reported inquiries and provide the best customer service, certain responsibilities must be assumed by the Customer when reporting Problems or soliciting advice. The Customer shall provide the following information to OhmniLabs when reporting Problems:

- (a) The name of the Product, the serial, version or release number or like information for the equipment; and the system site for the reported problem;
- (b) Contact name, company (if applicable), e-mail, and phone number;
- (c) The nature of the reported Problem, a description of the Problem and the Customer's assessment of the Problem's operational level. The Customer shall supply OhmniLabs with adequate information and access to its systems to enable OhmniLabs to investigate and attempt to identify and verify the reported operational issue. The Customer will also work with support personnel during the Problem isolation process, as needed; and
- (d) Reseller, if applicable will coordinate with OhmniLabs on any configuration changes, such as OhmniLabs work, installation/expansion, Updates, Upgrades, etc. that may be necessary for OhmniLabs' resolution of a Problem.

7.7 Response Procedures. Based upon the information provided by the Customer, OhmniLabs will recommend and implement a course of action. If the Customer does not agree with the course of action, the Customer will notify OhmniLabs of such dispute and OhmniLabs will work with the Customer to determine the appropriate operational level of the Problem.

8. LIMITATION OF LIABILITY

8.1 DISCLAIMER. EXCEPT WITH RESPECT TO LIABILITY ARISING FROM BREACHES OF SECTIONS 3 AND 10 HEREOF, NEITHER PARTY SHALL BE LIABLE UNDER ANY CONTRACT, TORT

OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, COVER, RELIANCE, INDIRECT OR CONSEQUENTIAL DAMAGES OR LOST REVENUE, OR LOSS OF DATA OR PROFITS, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8.2 LIMITATION. EXCEPT WITH RESPECT TO LIABILITY ARISING FROM BREACHES OF SECTIONS 3 AND 10 HEREOF OR LIABILITY ARISING FROM SECTION 7.1 HEREOF, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY UNDER THESE TERMS EXCEED THE AMOUNT OF FEES PAID BY THE CUSTOMER PURSUANT TO THESE TERMS IN THE THEN-PREVIOUS TWELVE (12) MONTH PERIOD; PROVIDED THIS LIMITATION SHALL NOT APPLY TO AMOUNTS DUE AND PAYABLE FROM THE CUSTOMER TO OHMNI LABS HEREUNDER. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT.

9. CONFIDENTIALITY

9.1 Limits on Use and Disclosure. The Customer may be provided Confidential Information of Ohmni Labs solely for the purpose of furtherance of the business relationship between the parties, as provided in these Terms, and shall not disclose the Confidential Information of Ohmni Labs to any Third Party, other than to employees of the Customer who have a need to have access to and knowledge of such Confidential Information, solely for the purpose authorized above. Each party shall take appropriate measures by instruction and agreement prior to disclosure to such employees to prevent unauthorized use or disclosure.

9.2 Exclusions. The Customer shall have no obligation with respect to information that (i) was rightfully in possession of the Customer without any obligation of confidentiality prior to receiving it from Ohmni Labs; (ii) is, or subsequently becomes, legally and publicly available without breach of these Terms; or (iii) is developed by or for the Customer without use of the Confidential Information and such independent development can be shown by documentary evidence. Upon written demand by Ohmni Labs, the Customer shall: (i) cease using the Confidential Information, (ii) return the Confidential Information and all copies, notes or extracts thereof to Ohmni Labs within seven (7) days of receipt of demand, and (iii) upon request of Ohmni Labs, certify in writing that the Customer has complied with the obligations set forth in this paragraph.

9.3 Government Mandated Disclosure. Notwithstanding Section 9.2, the Receiving Party may disclose Confidential Information pursuant to and in accordance with a valid order issued by a court or government agency, provided that the Customer (a) provides prior written notice to Ohmni Labs of such order; (b) provides Ohmni Labs a reasonable prior opportunity to oppose or restrict such disclosure; and (c) cooperates with Ohmni Labs regarding any such attempt to oppose or restrict such disclosure. Any such required disclosure shall not in any way alter the confidentiality requirements pertaining to such Confidential Information.

9.4 Independent Development. The terms of confidentiality under this Agreement shall not be construed to limit either party's right to independently develop or acquire products without use of the other party's Confidential Information. Ohmni Labs acknowledges that the Customer may currently, or in the future be developing information internally, or receiving information from other parties, that is similar to the Confidential Information. Accordingly, nothing in this Agreement will be construed as a representation or agreement that the Receiving Party will not develop or have developed for it products, concepts, systems or techniques that are similar to or compete with the products, concepts, systems or techniques contemplated by or embodied in the Confidential Information provided

that the Receiving Party does not violate any of its obligations under this Agreement in connection with such development.

10. Term and Termination.

10.1 Software License. The Software license granted under Section 2 shall remain effective until terminated as specified in the related Order, separate written agreement, or under this Section 10.1. The Customer may terminate the Software license at any time by destroying all copies of the Software and any login credentials permitting remote access to any Software. The Customer's rights under the Software license under Section 3 will terminate immediately without notice from OhmniLabs or any authorized OhmniLabs reseller if Customer fails to comply with any provision of these Terms. Upon termination, the Customer shall destroy all copies of the Software in its possession or control.

10.2 Termination of These Terms. If the Customer breaches any term or condition of these Terms, OhmniLabs shall notify the Customer and provide a thirty (30) day cure period. If the Customer does not cure such breach in that time period, OhmniLabs may, without limiting its other legal or equitable remedies, terminate or suspend any or all of its obligations and licenses under these Terms, an Order or any agreement between the parties, and repossess or reclaim the Software with full cooperation from the Customer, without being obligated to return any payments that may have been made to OhmniLabs. The Customer shall reimburse OhmniLabs for all reasonable costs incurred by OhmniLabs in undertaking any such reclamation or repossession.

10.3 Survival. All provisions of Sections 1.6, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 shall survive the termination of these Terms and remain binding upon and for the benefit of the parties, their successors and permitted assignees according to their terms. For the avoidance of doubt, termination of these Terms under Section 10.2 does not necessarily result in termination of any licenses to Software provided for in Section 3. Any such licenses may be terminated after the termination of these Terms, pursuant to Section 10.1.

11. GOVERNING LAW AND VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of California, USA, excluding: (i) its conflicts of laws principles; (ii) the United Nations Convention on Contracts for the International Sale of Goods; (iii) the 1974 Convention on the Limitation Period in the International Sale of Goods; and (iv) the Protocol amending the 1974 Convention, done at Vienna April 11, 1980. All disputes arising in connection with this Agreement shall be subject to the exclusive jurisdiction of the state and federal courts located in the State of California, USA and the parties agree and submit to the personal and exclusive jurisdiction and venue of these courts.

12. FORCE MAJEURE

Neither party shall be liable to the other for failure or delay in the performance of a required obligation if such failure or delay is caused by a Force Majeure Event, provided that such party gives prompt notice of such condition, uses reasonable efforts to resume its full performance as soon as possible, and provided further that the Non-Affected Party may terminate this Agreement if such Force Majeure Event continues for a period of ninety (90) days. During the Force Majeure Event, the Non-Affected Party may similarly suspend its performance

obligations (other than payment obligation accrued prior to the commencement of the Force Majeure Event), until such time as the other party resumes its performance obligations.

13. MISCELLANEOUS

13.1 Entire Agreement. These Terms constitute the entire agreement between the parties hereto relating to the subject matters of these Terms, except as follows, and any and all written or oral agreements heretofore existing between the parties hereto, including any preexisting Order, are expressly cancelled, excluding any written, mutually signed agreement between the Customer and OhmniLabs that specifically references these Terms. Except as expressly provided in these Terms, these Terms may not be modified or amended except pursuant to a written instrument signed by both parties. The failure of either party to act in the event of a breach of these Terms by the other shall not be deemed a waiver of such breach or a waiver of future breaches, unless such waiver shall be in writing and signed by both parties.

13.2 Assignment. These Terms are binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Neither party may assign or otherwise transfer these Terms or such party's rights and duties without the prior written consent of the other party to these Terms, except that either party may assign these Terms, without the prior written consent of the other party, to the successor of all or substantially all of such party's assets or business or to any Affiliate.

13.3 Injunctive Relief. Each of the parties recognizes that violations of Sections 3 (License) and 9 (Confidential Information) may cause irreparable injury to the other party for which it may not have an adequate remedy at law, and that any actual or threatened breach of this clause will entitle such other party to seek immediate injunctive relief prohibiting such breach without having to post a bond therefore, in addition to any other rights and remedies available to it.

13.4 Compliance with Law. OhmniLabs and the Customer shall comply with all applicable laws and regulations related to each of their performance under these Terms (including the export control laws of the United States and regulations thereunder concerning the exporting, importing and re-exporting of computer software, encrypted computer software and hardware). The Customer agrees to furnish all documentation required by the U.S. Government in connection with obtaining any required export license, and agrees that unauthorized diversion, transshipment or re-exportation of the Products in violation of the export license or any applicable law shall not be permitted.

13.5 Severability. If any provision of these Terms shall be held by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that these Terms shall otherwise remain in full force and effect and enforceable.

13.6 Construction. Unless the context expressly requires otherwise, (a) the word "or" shall be interpreted in the inclusive sense (i.e., "and/or"), (b) the word "include(ing)" shall mean "include(ing) without limitation" and (c) the singular shall include the plural and vice versa. Headings in these Terms are used for convenience only and shall not be used in the construction of the meaning of these Terms.

14. DEFINITIONS

14.1 “Affiliate” means, with respect to a party, an entity which controls, is controlled by, or is under common control with, such party, where “control” (and its correlates) means the direct or indirect ownership of more than 50% of the voting equity interest.

14.2 “Confidential Information” means the terms and conditions of these Terms, the existence of the discussions between the parties, and any other information disclosed under these Terms by one party to the other party, including information regarding each party's products, services, product designs, plans and roadmaps, prices and costs, trade secrets, know how, inventions, development plans, techniques, processes, programs, schematics, software, data, customer lists, financial information, sales and marketing plans, business opportunities, personnel data, research and development activities, and pre-release products, and any information posted on the OhmniLabs website (to the extent that such information is not publicly accessible), or any other information which the Receiving Party knows or reasonably ought to know is confidential, proprietary or trade secret information of OhmniLabs.

14.3 14.4 “DOA” means that a Product fails to function in material conformance with its specifications in the Documentation at the time of first use.

14.5 “Documentation” means the guides and manuals whether hard copy or electronic, for use with the OhmniLabs Products which are customarily supplied by OhmniLabs to its customers along with the OhmniLabs Products, OhmniLabs Products or OhmniLabs Services.

14.6 “End-User” means the person or entity that purchases the OhmniLabs Products and OhmniLabs Services, for their own use.

14.7 “Excluded Item” means any Product or Software, as the case may be, affected by at least one of the following: (a) Customer’s misuse, damage, or unauthorized modification of the Products or Software; (b) Customer’s combination of the Products or Software with other products or software, other than as authorized in writing by OhmniLabs or Customer’s unauthorized modification of the Products or Software; (c) OhmniLabs’ modification of the Products or Software in compliance with the Customer’s designs or specifications; (d) placement of the Products or Software in an operating environment contrary to specific written instructions and training materials provided by OhmniLabs to Customer; (e) subjecting the Products to unusual physical or electrical stress, whether such stress results from accident, neglect, misuse, failure of electrical power, air conditioning, humidity control or transportation, and such stress caused the Product to not perform in accordance with the specifications accompanying such Product; (f) maintenance of the Products or Software in a manner that is contrary to specific written instructions provided by OhmniLabs to Customer; (g) use of a product or service not provided, authorized or approved by OhmniLabs for use with the Products or Software; (h) any repair services not authorized or approved by OhmniLabs; (i) any design, documentation, materials, test data or diagnostics supplied by Customer that have not been authorized or approved by OhmniLabs; (j) usage of any test units, experimental products, prototypes or units from risk lots (each of which is provided “AS IS”); (k) any Products that have had their serial numbers or month and year of manufacture or shipment removed, defected or altered; (l) use of Products or Software incorporated into a system, other than as authorized by OhmniLabs; (m) malfunction or damage caused by viruses or hackers; (n) any Product or Software that has been resold or otherwise transferred to a Third Party by the Customer; or (o) any problem or nonconformity in any version or release of Software other than the then current release of Software and

the immediately preceding Updates (if OhmniLabs has made such corrective Updates available at no additional charge).

14.8 “Force Majeure Event” means an event beyond a party’s reasonable control, including a riot, fire, flood, earthquake, natural disaster, electronic virus, electronic attack or infiltration, Internet disturbance or government act.

14.9 “Hosted Services” means the network and/or cloud based services provided by OhmniLabs in connection with the use of the Products

14.10 “Support Services” means maintenance and technical support for Products and the Hosted Services

14.11 “Non-Affected Party” means the party, the Customer or OhmniLabs, not affected by a Force Majeure Event.

14.12 “Products” means any products ordered by the Customer from OhmniLabs, including any related Documentation. Where applicable, a Product shall include any Software embedded in a particular Product. The robotically-enabled video conferencing hardware system is also referred to as OhmniLabs or the OhmniLabs System.

14.13 “Order” means an order issued by the Customer to OhmniLabs for certain Products or Software, or Subscription to services, solely to the extent such Order is accepted by OhmniLabs.

14.14 “Receiving Party” means the party, OhmniLabs or the Customer, which receives the other party’s Confidential Information.

14.15 “Software” means the software embedded in the Products or software otherwise made available to interact with the Products, including related Documentation and any Updates and Upgrades which OhmniLabs makes available to the Customer from time to time.

14.16 “Suggestion” means a suggestion that the Customer provides to OhmniLabs for improvements or corrections to the Products or Services.

14.17 “Third Party” means a natural person or entity other than the Customer, an Affiliate of the Customer, OhmniLabs or an Affiliate of OhmniLabs.

14.18 “Update” means a subsequent release or version of the Software that OhmniLabs generally makes available for its customers who at no additional license fee.

14.19 “Upgrade” means a subsequent release or version of the Software and or Hardware which could be combined with a Product, which OhmniLabs generally makes available for its customers at an additional license fee.