

## OMNIBOARD, INC.

### TERMS OF USE

These Terms of Use (“**Terms of Use**”) set forth the legally binding terms of the agreement between Omniboard, Inc. (“**us**,” “**we**” or “**Omniboard**”) and you (“**you**” or “**User**”), as the end-user using the Omniboard Solution (as hereinafter defined).

If you are acting as an employee, consultant or other authorized representative (“**Representative**”) of an entity that has entered into an Enterprise Solutions Agreement with us, then as between us and such entity, the terms of the Enterprise Solutions Agreement shall supersede these Terms of Use. However, all end-users of the Omniboard Solution must agree to these Terms of Use as well, and these Terms of Use govern the relationship between Omniboard and all end-users.

BEFORE USING THE OMNIBOARD SOLUTION AND AGREEING TO THESE TERMS OF USE, YOU SHOULD CAREFULLY READ THESE TERMS OF USE. BY USING THE OMNIBOARD SOLUTION, YOU WILL BE DEEMED TO HAVE ACCEPTED THESE TERMS OF USE. Use of the Omniboard Solution is void where prohibited. By accepting these Terms of Use and using the Omniboard Solution, you represent and warrant that (a) you have the right, authority, and capacity to enter into these Terms of Use and to abide by all of the terms and conditions set forth herein; (b) you agree to comply with these Terms of Use; (c) you acknowledge the Omniboard Privacy Policy (available at [www.Omniboardinc.com](http://www.Omniboardinc.com)); (d) all registration information you submit is truthful and accurate; (e) you will maintain the accuracy of such registration information; (f) you will not permit any other individual to use your User account; and (g) your use of the Omniboard Solution does not violate any applicable law or regulation.

You acknowledge that we may update these Terms of Use from time to time, and you agree to be bound by any subsequent update to these Terms of Use. The most recent version of these Terms of Use can be found at Omniboard’s website at [www.Omniboardinc.com](http://www.Omniboardinc.com) or in the Omniboard Solution itself. Though we will attempt to notify you of any material changes in the Terms of Use by posting a notice on our website or sending an email to your registered email address, it is your responsibility to check for updates to the Terms of Use and any such update shall be effective even if you do not receive notice of such update. If you do not consent to the updated Terms of Use, you can discontinue use of the Omniboard Solution. Your continued use of the Omniboard Solution will constitute acceptance of the updated Terms of Use.

#### 1. DEFINITIONS.

“**Background Data**” means any data provided by the Hosted Service that is provided by Omniboard or other third parties and that is not collected from Customer, its users or the Devices. Background Data may include weather data, traffic data and aggregated usage data from other buildings that are connected to the Omniboard Solution.

“**Building**” means the building or other infrastructure project of Customer for which Devices and related Background Data will be managed using the Omniboard Solution.

“**Customer**” shall mean you, if you are not associated with an enterprise account, and shall mean the enterprise subscriber with which you are associated if you are associated with an enterprise account.

“**Customer Data**” means any and all data and information related to a Building submitted by you and other users of the Customer for use in conjunction with the Omniboard Solution and any information collected by the Omniboard Solution from connected Devices within a Building.

“**Devices**” means one or more hardware devices that are connected to the Hosted Service, including without limitation any Maverick Hardware connected to the Hosted Service.

“**Documentation**” means the written documentation related to the Omniboard Solution made available by Omniboard on-line at [www.support.omniboardsolutions.com](http://www.support.omniboardsolutions.com), as may be updated from time to time by Omniboard. Should you no longer have portal access, please email your Service Expert at [support@omniboardinc.com](mailto:support@omniboardinc.com).

“**Hosted Service**” means Omniboard’s hosted software service that interacts with Devices, collects information from Devices, collects Background Data and, in select cases, controls Devices within a Building.

“**Maverick Hardware**” means Omniboard’s standalone router/server designed as a local network control interface for hardware devices within a Building, including without limitation Omniboard’s Maverick and MiniMav hardware controllers, and any other hardware provided by Omniboard from time to time.

“**Maverick Software**” means the proprietary software delivered by or made available for downloading or use by Omniboard in connection with the Maverick Hardware. The Maverick Software may be embedded on any Maverick Hardware or may be provided by Omniboard independently of the Maverick Hardware. The Maverick Software also includes the firmware loaded on any Maverick Hardware.

“**Omniboard Solution**” means Omniboard’s building management solution, which includes the Hosted Service and any Maverick Hardware and Maverick Software.

## **2. USE OF OMNIBOARD SOLUTION.**

**2.1 HOSTED SOLUTION.** Subject to payment of any applicable service fees, as well as the other terms and conditions of these Terms of Use, Omniboard hereby grants to you a nonexclusive and nontransferable license to: (i) remotely access the Hosted Service via the Internet; and (ii) use the Hosted Service for the Customer’s own internal business purposes solely in connection with monitoring and managing Devices within a Building (the “**Authorized Purpose**”) and in accordance with the Documentation.

**2.2 MAVERICK SOFTWARE.** Subject to these Terms of Use and for only so long as Customer owns the Maverick Hardware, Omniboard hereby grants to you a nonexclusive and nontransferable license to use the Maverick Software for the Customer’s own internal business purposes in connection with its use of the Maverick Hardware and solely in accordance with the Documentation. You may not copy the Maverick Software, even for backup purposes.

The licenses granted in this Section 2 are limited to the registered User. User accounts are for a specific, named individual and cannot be shared or used by more than one individual. You and Customer are responsible for all activities conducted under your User account.

### **3. USER RESTRICTIONS AND RESPONSIBILITIES RELATING TO USE OF THE OMNIBOARD SOLUTION.**

**3.1 LEGAL USE OF OMNIBOARD SOLUTION.** You shall not, either directly or indirectly, use the Omniboard Solution or any associated data in a manner that is prohibited by any law or regulation, that is in violation of any contractual agreement by which you or the Customer are bound, that violates any third party rights or that facilitates the violation of any law, regulation or third party rights, or that would disrupt any third party use or enjoyment of any services provided by Omniboard.

**3.2 RESTRICTIONS ON USE OF OMNIBOARD SOLUTION.** You shall not: (a) copy, distribute, or disclose any part of the Omniboard Solution in any medium; (b) resell, sublicense, lease, time-share or otherwise make the Omniboard Solution available to any third party except as expressly permitted herein; (c) use the Omniboard Solution to send or store infringing or unlawful material or material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (d) modify, copy or create derivative works based on the Omniboard Solution; (e) reverse engineer, decompile, or disassemble the Omniboard Solution, except as expressly permitted by applicable law; or (f) access the Omniboard Solution for the purpose of building a competitive service or copying its features or user interface.

**3.3 REGISTRATION INFORMATION.** You agree to keep all contact and other registration information provided to us up-to-date. By providing us with your email address you consent to our using such email address to send you Omniboard Solution-related notices, including without limitation any notices required by law, in lieu of communication by postal mail. We may send you other messages related to the Omniboard Solution, though you may email your Service Expert at [support@omniboardinc.com](mailto:support@omniboardinc.com) to opt out of many Omniboard Solution-related communications.

**3.4 TERMINATION OF USE.** You agree and acknowledge that we or the Customer may permanently or temporarily terminate, suspend, or otherwise refuse to permit your access to the Omniboard Solution without notice and liability for any reason we deem acceptable, including without limitation for any violation of these Terms of Use.

### **4. OUR INTELLECTUAL PROPERTY.**

**4.1 OMNIBOARD SOLUTION.** All right, title and interest, including without limitation all intellectual property rights, in and to the Omniboard Solution, including without limitation any suggestions, ideas, enhancement requests, feedback and recommendations regarding the Omniboard Solution provided by you, shall remain with Omniboard and its licensors. You hereby assign to Omniboard all of your intellectual property and other rights in any suggestions, enhancement requests, recommendations or other feedback regarding the Omniboard Solution provided to Omniboard by you. You agree to take no action regarding the Omniboard Solution that is inconsistent with Omniboard's ownership. Except as otherwise expressly stated herein, nothing in these Terms of Use shall be construed to grant you any license or right, by implication, estoppel, or otherwise, to any Omniboard intellectual property rights. Omniboard reserves the right to modify the features, functionality, templates, and other aspects of the content of the Omniboard Solution from time to time.

**4.2 CUSTOMER DATA.** You hereby grant Omniboard a nonexclusive license to use the any Customer Data provided by you in connection with Omniboard's provision of the Hosted Service, and you represent that you have the right to grant such license. You acknowledge that in connection with the provision of the Hosted Services, Omniboard may use anonymized extracts of the Customer Data and similar data from other customers to provide aggregated building management data, analytics and

recommendations to you, other customers and other third parties, and you consent to such use of anonymized Customer Data. As between you and Omniboard, you shall retain all of your intellectual property and other proprietary rights in the Customer Data you provided.

**4.3 BACKGROUND DATA.** You hereby acknowledge that the Background Data remains the property of Omniboard or its third-party licensors. You may only use such Background Data in connection with your use of the Hosted Service and will not otherwise use or disclose such Background Data. Without in any way limiting Section 5, you acknowledge that the Background Data is provided “as-is” and that Omniboard makes no representation or warranty regarding the accuracy or utility of the Background Data.

## **5. NO WARRANTIES.**

**5.1 NO WARRANTIES.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, UNLESS OTHERWISE AGREED TO BY OMNIBOARD IN A SIGNED WRITING, THE OMNIBOARD SOLUTION (INCLUDING WITHOUT LIMITATION THE MAVERICK HARDWARE) IS PROVIDED “AS-IS” AND NEITHER OMNIBOARD NOR ITS AFFILIATES OR SUPPLIERS MAKE, AND USER DOES NOT RECEIVE, ANY WARRANTY (EXPRESS, IMPLIED OR STATUTORY) WITH RESPECT TO THE OMNIBOARD SOLUTION, THE BACKGROUND DATA OR ANY USE OF OR INABILITY TO USE THE OMNIBOARD SOLUTION. OMNIBOARD AND ITS AFFILIATES AND SUPPLIERS EXPRESSLY DISCLAIM ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESIGN, CONDITION, CAPACITY, PERFORMANCE, TITLE, ACCURACY, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. USER UNDERSTANDS AND ACKNOWLEDGES THAT NEITHER OMNIBOARD NOR ITS AFFILIATES OR SUPPLIERS WARRANT THAT THE OMNIBOARD SOLUTION OR THE BACKGROUND DATA WILL MEET USER’S REQUIREMENTS, OR THAT THE OPERATION OF THE OMNIBOARD SOLUTION WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT ALL SOFTWARE ERRORS WILL BE CORRECTED.

NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY OMNIBOARD, ITS EMPLOYEES, DISTRIBUTORS, DEALERS OR OTHER AGENTS SHALL INCREASE THE SCOPE OF THE ABOVE WARRANTIES OR CREATE ANY NEW WARRANTIES.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO A PORTION OF THE ABOVE EXCLUSION MAY NOT APPLY TO USER. IN THAT EVENT, ANY IMPLIED WARRANTIES ARE LIMITED IN DURATION TO THIRTY (30) DAYS FROM THE DATE OF DELIVERY OF THE OMNIBOARD SOLUTION. THIS WARRANTY GIVES USER SPECIFIC LEGAL RIGHTS. USER MAY HAVE OTHER RIGHTS, WHICH VARY FROM JURISDICTION TO JURISDICTION.

NEITHER OMNIBOARD NOR ITS AFFILIATES OR SUPPLIERS MAKES ANY REPRESENTATION THAT USE OF THE OMNIBOARD SOLUTION IS APPROPRIATE OR AVAILABLE FOR USE IN LOCATIONS OUTSIDE OF THE UNITED STATES OR WHERE IT IS ILLEGAL OR PROHIBITED BY LAW.

The Omniboard Solution is not warranted to operate without failure. The Omniboard Solution should only be incorporated in systems designed with appropriate redundancy, fault tolerance or back-up features. Accordingly, the Omniboard Solution is not intended to be used, or appropriate to be used, in life support systems or other applications where failure could cause injury or loss of life. Therefore, if you

decide to use the Omniboard in connection with such applications, you assume all risk of such use and agree to indemnify and hold harmless Omniboard, its officers, directors and affiliates against from any liabilities, claims, damages, costs and expenses (including without limitation reasonable attorney's fees) which arise from such use.

THE LIMITATIONS IN THIS SECTION 5.1 SHALL APPLY NOTWITHSTANDING ANY FAILURE OF AN ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN.

**5.2 NO WARRANTY AGAINST LOSS OF DATA.** While certain data on the Omniboard Solution is backed up periodically, without limiting the generality of the foregoing disclaimers, in no event will Omniboard assume liability for any loss or corruption of Customer Data or other data stored in the Omniboard Solution. User acknowledges that it is User's responsibility to backup Customer Data and any other data stored in the Omniboard Solution. The Omniboard Solution is not designed to operate without error.

**6. LIMITATION OF LIABILITY.**

**6.1 WAIVER OF CONSEQUENTIAL DAMAGES.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL OMNIBOARD OR ITS AFFILIATES OR SUPPLIERS BE LIABLE FOR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO THE OMNIBOARD SOLUTION, THE BACKGROUND DATA, USER'S USE OF OR INABILITY TO USE THE OMNIBOARD SOLUTION OR THESE TERMS OF USE, HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT OR OTHERWISE) AND EVEN IF OMNIBOARD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**6.2 LIMITATION ON DAMAGES.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, OMNIBOARD AND ITS AFFILIATES AND SUPPLIERS FURTHER DISCLAIM ALL LIABILITY FOR ANY LOSS OR DAMAGE ARISING OUT OF OR RELATED TO THE OMNIBOARD SOLUTION, THE BACKGROUND DATA, USER'S USE OF OR INABILITY TO USE THE OMNIBOARD SOLUTION OR THESE TERMS OF USE, INCLUDING WITHOUT LIMITATION ANY PERSONAL INJURY OR PROPERTY DAMAGE. USER'S USE OF THE OMNIBOARD SOLUTION IS AT USER'S OWN DISCRETION AND RISK. Some jurisdictions do not allow the limitation or exclusion of liability for personal injury, incidental or consequential damages or certain other types of damages, so some of the above limitations or exclusions may not apply to you. In such case, to the maximum extent permitted under applicable law, the entire liability of Omniboard and its users, affiliates and suppliers for any damages whatsoever, whether arising under contract, tort or otherwise, arising under or related to the Omniboard Solution, the Background Data, User's use of or inability to use the Omniboard Solution or these Terms of Use shall be limited to US\$100.

**6.3 NO EXCEPTIONS.** THE LIMITATIONS IN THIS SECTION 6 SHALL APPLY WHETHER OR NOT OMNIBOARD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

**7. INDEMNIFICATION.** User agrees to indemnify, hold harmless, defend and release Omniboard and its users, affiliates and suppliers, and its and their respective officers, directors, stockholders and agents, from any claims, losses, damages or liabilities, including without limitation attorney's fees,

arising out of (i) the use or misuse of the Omniboard Solution or the Background Data by User or anyone using User's account(s), (ii) breach of these Terms of Use by User or anyone using User's account(s), (iii) the violation of any applicable law or the rights of any other person or entity by User or anyone using User's account(s) or (iv) the infringement of any intellectual property or other right of any person or entity by User or anyone using User's account(s). User agrees not to settle any such matter without the prior written consent of Omniboard. Omniboard reserves the right, at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify us and you agree to cooperate with our defense of these claims.

## **8. TERM AND TERMINATION.**

**8.1 TERMINATION.** These Terms of Use shall commence on the date you first begin using the Omniboard Solution and shall continue until the date you close your account on the Omniboard Solution and cease all use of the Omniboard Solution. Omniboard reserves the right to terminate your use of the Omniboard Solution at any time, in its sole discretion with or without cause, and you should not place any reliance on your ability to continue to use the Omniboard Solution. In case of any termination, you must cease all use of the Omniboard Solution and Omniboard may immediately restrict your access to the Omniboard Solution.

**8.2 SURVIVAL.** The provisions of Sections 1, 3, 4, 5, 6, 7, 8 and 9 shall survive termination of these Terms of Use.

## **9. GENERAL TERMS.**

**9.1 GOVERNMENT USERS.** If Customer is a federal government entity or is licensing the Omniboard Solution on behalf of such an entity, Omniboard provides the Omniboard Solution and related technology, for ultimate federal government end use solely as follows: Government technical data and software rights related to the Omniboard Solution include only those rights customarily provided to the public as defined in these Terms of Use. 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 greater rights are needed, a mutually acceptable written addendum specifically conveying such rights must be executed with these Terms of Use.

**9.2 INDEPENDENT CONTRACTORS; THIRD PARTY BENEFICIARIES.** The parties are independent contractors, and no partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties is created hereby. There are no third party beneficiaries to these Terms of Use.

**9.3 ENTIRE AGREEMENT; AMENDMENT.** These Terms of Use represent the entire agreement of the parties hereto, and supersede all prior or contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. Notwithstanding any language to the contrary therein, no terms stated in a purchase order or similar ordering document (other than a mutually executed document) shall be incorporated into these Terms of Use, and all such terms shall be void. These Terms of Use may not be modified except by Omniboard as provided at the beginning of these Terms of Use or in a writing signed by Omniboard.

**9.4 WAIVERS; REMEDIES.** No amendment or waiver of any provision of these Terms of Use shall be effective unless in writing and signed by User and Omniboard. No failure or delay in

exercising any right hereunder shall constitute a waiver of such right. Except as otherwise provided, remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

**9.5 SEVERABILITY.** If any provision of these Terms of Use is held by a court of competent jurisdiction to be contrary to law, such provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions shall remain in effect.

**9.6 ASSIGNMENT.** These Terms of Use will be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. Notwithstanding the above, User may not assign its rights or obligations under these Terms of Use, whether by operation of law or otherwise, without the prior written consent of Omniboard. Any assignment in violation of this Section shall be null and void. Omniboard may assign these Terms of Use in its entirety, without consent of User, to any party, including without limitation to a successor in interest to the business of Omniboard, whether by a merger, reorganization, asset sale or similar transaction.

**9.7 GOVERNING LAW; VENUE.** These Terms of Use will be deemed to have been made in the State of California, and the provisions and conditions of these Terms of Use will be governed by and interpreted in accordance with the laws of the State of California, without regard to conflict of laws principles thereof. EXCEPT FOR ANY ACTIONS FOR PRELIMINARY EQUITABLE RELIEF, THE EXCLUSIVE VENUE FOR ANY DISPUTE RELATING TO THIS AGREEMENT IS THE STATE AND FEDERAL COURTS LOCATED IN SAN FRANCISCO, CALIFORNIA. USER AND OMNIBOARD CONSENT TO THE PERSONAL JURISDICTION OF THESE COURTS. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to these Terms of Use.

We suggest you print out a copy of these Terms of Use for your records. Should you have any questions concerning these Terms of Use, you may contact Omniboard at [support@omniboardinc.com](mailto:support@omniboardinc.com).

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