

# OMNI-Test Laboratories, Inc. Professional Services Agreement

This agreement by and between «Company» («Short») at «Address1», «Address2» and OMNI-Test Laboratories, Inc. (**OMNI**) an Oregon USA Corporation, is made this 19th day of December 2017.

The mutual covenants and promises described in this Contract constitute the consideration(s). The term "Contract" means this Professional Services Agreement (PSA) including the Terms and Conditions presented on pages 1 through 4, as well as proposals and other written documents listed below within the Work Order(s) (services).

To the extent that any additional or different terms or conditions conflict with the Work Order(s) and Terms and Conditions of this PSA, the Work Order(s) and Terms and Conditions of this PSA shall govern. No amendment or modification to this PSA or any waiver of any provisions hereof or thereof shall be effective unless in writing, signed by both parties.

The testing and listing standards used by **OMNI** for determining whether an appliance is qualified for **OMNI** certification contain the basic requirements for product construction, performance, and consumer safety information. These requirements are derived from the consensus development process for standards utilized by organizations such as Underwriters Laboratories, Inc. (UL) and the American National Standards Institute (ANSI). As such, these requirements are based upon sound engineering principles, research, records of tests and field experience, and an appreciation for manufacturing, installation, and use problems derived from consultation with and information obtained from manufacturers, users, inspection authorities, and others having specialized experience. They are also subject to revision by **OMNI** and/or the respective standards writing organizations as further experience and investigation may show is necessary or desirable for public safety and good business practice.

At **OMNI**, an appliance which complies with the test of an applicable testing and listing standard will not necessarily be certified by **OMNI** to comply with the applied standard(s) if, when examined and tested, it is found to have other features which impair the level of safety contemplated by the applicable testing or listing standard.

At **OMNI**, an appliance using materials or having forms of construction differing from those detailed in an applicable test-standard may be examined and tested according to the intent of the applied test standard and, if found to be substantially equivalent, may be certified to comply with the applicable test standard.

**OMNI**, in performing its test-laboratory functions, does not assume or undertake to discharge any responsibility of «Short» or any other party. The opinions and findings of **OMNI** represent its professional judgment given with due consideration to the necessary limitations of practical operation and test standard interpretation, at the time testing is performed.

THESE TERMS AND CONDITIONS are agreed to as of the day and year set forth above, between **OMNI** and «Short». **OMNI** and «Short» are sometimes referred to collectively as the "parties" and individually as the "party."

## RECITALS

WHEREAS, «Short» has engaged **OMNI** to provide the testing services specified in the accompanying Work Order and subsequent Work Orders ("Services"); and

WHEREAS, **OMNI** is willing to provide the Services in accordance with the terms and conditions contained in the Work Order(s) and these Terms and Conditions, which together constitute the parties' agreement with respect thereto ("Agreement");

NOW, THEREFORE, with reference to the above recitals and in consideration of those covenants and promises but subject to the conditions contained herein, the Parties hereby agree as follows:

1. Engagement for Services. «Short» hereby engages **OMNI** to provide the Services, and **OMNI** hereby agrees to provide the Services pursuant to the terms and conditions of this Agreement.

2. Term. This Agreement shall be effective as of the date hereof and shall continue until both parties have completed performance of their respective obligations hereunder, unless earlier terminated as herein provided. **OMNI** shall commence performance of the Services on or about the "Anticipated Commencement Date" specified on each Work Order and shall expend its best efforts to complete the Services on or before the "Estimated Completion Date" specified on each Work Order. This Agreement shall be in effect for all Work Orders signed by both parties until terminated by both parties in writing.

3. Client Cooperation. «Short» acknowledges that «Plural» complete cooperation with **OMNI's** reasonable requests for access to «Plural» personnel and pertinent information and data is essential to **OMNI's** effective and timely performance of the Services. «Short» covenants to give **OMNI**, «Plural» complete cooperation in this regard.

4. Payment of Fees and Charges. «Short» agrees to pay **OMNI** when, and as due, all fees and charges specified in each Work Order, and all sums otherwise owing under this Agreement. Except as otherwise provided in each Work Order, fees and charges shall be paid to **OMNI** as herein provided. Fees shall be paid in lawful money of the United States of America at **OMNI's** place of business as from time to time identified to «Short» pursuant to section 18.3 of this Agreement. All **OMNI** fees and testing charges invoiced to «Short» shall be paid in full within the first thirty (30) days after the invoice date. See individual invoices for this and other early payment discount information. The discount rate indicated by the invoice shall only apply to payments received by **OMNI** within the time

period specified by the invoice. Discounts are not applicable to deposit invoices.

5. Past Due Service Charges. Fees and charges due shall accrue interest from the invoice date until paid at the rate of one and a half percent (1.5%) per month compounding interest. Any discount(s) in fees or charges granted to «Short» by **OMNI** shall be void fifteen (15) days after written notice by **OMNI** to «Short» of failure to timely pay previously invoiced fees and charges. Additionally, if «Short» fails to pay past due fees or charges within thirty (30) days after written demand from **OMNI**, **OMNI** may elect not to grant «Short» any right to use any of the Work Product as defined at Section 8 hereof. These remedies shall be in addition to any other remedies **OMNI** may have against «Short» hereunder, at law or in equity.

6. Termination. In addition to termination rights granted elsewhere in this Agreement:

6.1. Either party may terminate this Agreement, for any reason, upon written notice to the other, provided such notice is given to the other as provided in section 18.3 of this Agreement at least thirty (30) days before the earliest anticipated commencement date of the Services.

6.2. This Agreement may be terminated by either party in the event the other party defaults in the performance of anything required of it hereunder, if, but only if, the defaulting party fails to cure any such default within thirty (30) days after written notice of such default.

6.3. A party's right to terminate this Agreement under this Section 6 shall be in addition to any other remedies available to such party under the terms of this Agreement, statutory and common law, and principles of equity.

7. Ownership of Work Product. Work Product to be delivered, rendered, and owned by to «Short» includes: any certification of product conformance to a performance standard, construction, test report, design, working drawing, plan, estimate proposal, conclusion, judgment, apparatus, compositions of matter, or configurations of any kind developed, made, or produced by **OMNI** alone or with others in performance of the services; provided, however, that «Short» is not in breach of, and does not default on, any obligation to **OMNI**. In the event of any breach by «Short», not otherwise cured within thirty (30) days of written notice from **OMNI**, **OMNI** may retain and recover and shall be the owner of all such Work Product. Additionally **OMNI** shall at all times own and have exclusive rights to Work Product conceived, built or developed by it or its agents or subcontractors including those data and results upon which **OMNI** has based its certifications.

Upon full performance by «Short» and payment in full of all sums which «Short» owes to **OMNI**, **OMNI** shall provide «Short» one complete set of reproducible copies of all test reports, designs, working drawings, plans, and estimates (but no computer programs, except by separate agreement). At no time, however, may «Short» sell, trade or transfer such copies of collateral or secondary Work Product to third parties without **OMNI**'s prior written consent.

All use of Work Product described in this Section 7 shall be subject to the continuing covenant of confidentiality, set forth at Section 8 of this Agreement.

8. Confidential Information. Both parties shall preserve as confidential all Trade Secrets and Confidential Information, as hereinafter defined, pertaining to the business of either party that has been disclosed in connection with this Agreement and/or the performance of the Services. Neither party shall use for such party's own benefit or purposes or disclose to others, except as may be required in connection with the performance of the Services, any Trade Secret or Confidential Information pertaining to the other party's business without first obtaining the written permission of that other party. The obligations of this Section 8 shall survive the expiration or earlier termination of this Agreement. The restrictions of this Section 8 shall not apply to disclosures to governmental authorities or **OMNI**'s accrediting bodies, nor to Trade Secrets or Confidential Information which has previously been disclosed to the public by the party which owns it, or which has been independently developed and disclosed by others, or which has otherwise entered the public domain through a means not involving unlawful conduct of, or a breach of this Agreement by, the other party to this Agreement.

For the purpose of this Agreement, "Trade Secrets" and "Confidential Information" shall include, but not be limited to, drawings, designs, models, plans, proposals, computer programs, test data, marketing and sales plans, financial information, costs, «Short» lists, pricing information and all concepts or ideas used in, or reasonably related to, the business of a given party and not readily available to the public at large.

9. No Publicity. The parties agree to keep confidential the existence of this Agreement. Disclosure of the existence of this Agreement or any of its terms by either party or their respective employees, subcontractors, agents or advisors to third parties shall be subject to the prior written approval of the other party, except by required disclosures to governmental authorities and to authorized agents and employees of the parties engaged in the performance of the Services. «Short» is specifically prohibited from using any part of the name, any logo, certification mark or any trademark of **OMNI** for any purpose, including but not limited to advertising or promotion of a product or products which have been the subject of testing or other services performed by **OMNI** under this Agreement, without **OMNI**'s prior written approval, which shall not be unreasonably withheld. The parties agree that breach of any of these covenants may cause irreparable harm which cannot be adequately remedied by money damages. Accordingly, the parties stipulate that in the event of any breach or threatened breach of these Section 9 covenants, the non-breaching party may have equitable relief, including a temporary restraining order and preliminary injunction, barring further prohibited conduct. Such equitable relief shall be in addition to any other remedies which a party may have under this Agreement, or at law, including recovery of damages.

10. Standard of Performance. **OMNI** shall perform the Services in accordance with the standard of care, skill and diligence typically employed by other persons providing similar services in the United States of America.

11. Limitation of Liability. **OMNI** shall not be liable to «Short», or to others claiming through «Short», for any consequential or incidental damages resulting from any default by **OMNI** under this Agreement. **OMNI**'s total liability in contract damages to «Short» or to others claiming through «Short» for any default by **OMNI** hereunder shall not exceed the total sum of charges and fees paid by «Short» to **OMNI** with respect to the Services.

12. Regulatory requirements. In accordance with government or state regulatory requirements, **OMNI** agrees to conduct compliance audit testing of the manufacturer's model line(s). The compliance audit testing will be

at the manufacturer's expense and at the testing costs normally charged to such manufacturers at the time the regulatory agency requires/requests the compliance audit testing.

13. No Right of Set Off. «Short» shall have no right of "set off" against sums owing to **OMNI** under this Agreement.

14. Indemnification of OMNI. «Short» agrees to indemnify, defend and hold **OMNI** harmless from and against any and all claims made against it for loss, injury or damage of any kind, by any and all persons except employees and agents of **OMNI**, whenever such claims arise out of or are related in any way to performance of any Services under this Agreement, or any use of said Services.

15. No Third Party Reliance on Test Results. The Services performed under this Agreement and all information developed thereby, including Work Product, are for the benefit of «Short» and **OMNI** and are not to be disclosed to any third person for such third person's consideration and reliance, unless the parties expressly so agree. Furthermore, no third party is permitted to rely or should rely on such information, including test results, without the parties' written agreement. This section expressly allows «Short» to rely on **OMNI**'s certifications but does not allow reliance on the data for other interpretations.

16. Hiring of OMNI Employees by «Short». In the event «Short» (a) hires an **OMNI** employee for employment at «Short» or (b) «Short» hires an **OMNI** Employee for contract consulting and/or technical services within six months of the last invoice for services sent to «Short» by **OMNI**, «Short» agrees to pay **OMNI** 50% (fifty percent) of (a) the value of the employee's annualized salary and benefits, or (b) the value of the employee's annualized contracted consulting and/or technical services. Annualized values shall be based on 2080 hours of employment or contract services.

17. Use of Name and Logo. **OMNI** holds the exclusive rights and privileges to its name and logo. This agreement does NOT grant «Short» any rights to the use of **OMNI**'s name and/or logo, without the express written permission of **OMNI**.

18. General Provisions.

18.1. Succession. The Agreement shall inure to the benefit and shall be binding upon the parties, their respective successors, assigns and legal representatives. Except as otherwise provided in section 18.13, assignment or assumption of any rights or duties under this Agreement shall be void unless first approved in writing by the other party hereto.

18.2. Severability. If any provision of this Agreement is prohibited or unenforceable in any jurisdiction, said provision shall be ineffective only to the extent of such particular prohibition or unenforceability, without invalidating or affecting any of the remaining provisions hereof, all of which shall remain in full force and effect to the fullest extent permitted by law; and any such prohibition or unenforceability in any jurisdiction shall not necessarily invalidate or render unenforceable such provisions in any other jurisdiction.

18.3. Notices. Any notice provided for in this Agreement shall be in writing and will be mailed by registered or certified mail, return receipt requested, postage prepaid, or transmitted by hand delivery, national overnight courier service (prepaid), email or facsimile transmission addressed as follows: **OMNI** at 13327 NE Airport Way, Portland, OR 97230, Attention: President or Vice President, or at such other address as **OMNI** may from time to time in writing designate; and to «Short» at the address shown on the Work Order, or at such other address as «Short» may from time to time in writing designate (or «Plural» business address of record in the absence of such designation). All notices shall be deemed to have been given when delivered to the addressee with the return receipt, the delivery receipt, the affidavit of messenger or (with respect to email or a facsimile) the confirmation of transmission being deemed conclusive evidence of such delivery or at such time as delivery is refused by the addressee upon presentation.

18.4. Entire Agreement. These Terms and Conditions and accompanying Work Order(s) and any attachments thereto constitute the entire agreement of the parties relating to the subject matter hereof, and this Agreement replaces and supersedes any and all prior agreements or understandings between the parties, other than the Product Documentation and Listing Agreement, relating to said subject matter. No amendment or modification of this Agreement shall be valid unless made in writing and signed by the parties hereto.

18.5. Waiver. Any waiver by any party of any breach of any term of the Agreement by the other party shall not constitute a waiver by such party of any other breach of the same or any other term, and each party at all times insists upon the other party's full and timely performance of all terms.

18.6. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state of Oregon.

18.7. Situs. In the event any litigation arises from this Agreement, venue for such litigation shall lie exclusively in Multnomah County, Oregon.

18.8. Attorney's Fees. In the event «Short» defaults upon any payment obligation to **OMNI**, and the matter is placed in the hands of a collection agency, **OMNI** shall recover all costs of collection from «Short»; and, in the event any suit or action is instituted to enforce, interpret, or for breach of any term or provision of this Agreement, or arises out of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all of its costs, including costs of investigation and expert witnesses, plus such sums as the court may adjudge as reasonable for the prevailing party's attorney's fees in such suit or action, including any appeal thereon.

18.9. Time is of the Essence. Time is of the essence of performance of all terms set forth herein.

18.10. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one in the same instrument.

18.11. Gender. Where the context so requires, the use of the masculine gender shall include the feminine and neuter genders, and the singular shall include the plural, and vice versa, and the word "person" shall include corporation, firm, partnership, or other form of association or organization.

18.12. Headings. The headings used in this Agreement are for identification only and shall not be considered in the interpretation of any of its provisions.

18.13. Relation of Parties. **OMNI** is an independent contractor and shall not be deemed to be an employee, agent or servant of «Short». «Short» seeks only the performance of the Services, and the manner and means of performance of the Services shall be under the sole control of **OMNI**. **OMNI** shall not be entitled to either workman's compensation or unemployment insurance benefits by virtue of this Agreement or **OMNI**'s relationship with «Short». **OMNI** has the right to consult and employ other independent contractors of its choice to assist it with respect to special technical issues related to the Services.

18.14. Further Assurances. Each party shall execute and deliver to the other party any further documents or instruments and shall perform any further acts that may be reasonably required to fully effect the transactions intended by this Agreement.

For new clients, IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representative.

CLIENT:  
«Company»  
«Address1»  
«Address2»

OMNI-Test Laboratories, Inc.  
13327 NE Airport Way  
Portland, OR 97230

BY: _____	BY: _____
SIGNATURE: _____	SIGNATURE: _____
TITLE: _____	TITLE: _____
DATE: _____	DATE: _____

For existing clients, please refer to the testing services quotation information.