

OmniUpdate Terms and Conditions

Enterprise SaaS License and Support

The use by Chabot-Las Positas Community College District (“Licensee”) of OmniUpdate, Inc.’s (“OmniUpdate”) Software-as-a-Service Application (“SaaS”), OU Campus (“OU Campus” or “Software”), is expressly conditioned on each parties’ acceptance of the following terms and conditions including Exhibits A, B, and C (collectively the “Agreement” or “Terms”):

1. DESCRIPTION OF SERVICE

OmniUpdate provides Licensee’s authorized users with the ability to easily update Licensee’s website using an intuitive browser-based website editor and have these updates — typically additions, modifications, and deletions to the original content — published back to Licensee’s web server. The specific services to be delivered by OmniUpdate are defined in Exhibits A and B.

To use OU Campus, Licensee must obtain access to the Internet, either directly or through devices that access web-based content. OU Campus does not include access to the Internet or the equipment necessary for Licensee to obtain such access.

OU Campus does not store or serve “production” web pages for its Licensees. “Production” web pages are defined as the files that are served directly to visitors accessing a website. OU Campus does store copies of the editable files of Licensee’s web pages in a private storage area, making them available for editing to authorized users as defined by the Licensee.

2. BILLING POLICIES

Payment for Software-as-a-Service (SaaS) is billed annually and due in advance. Second and subsequent year invoices for multiyear agreements are generated sixty (60) days prior to the first day of the calendar month for which this Agreement’s term begins (as defined in Exhibit A). All payments are due within forty-five (45) days of invoice receipt by Licensee. If payment is not received within forty-five (45) days of invoice receipt by Licensee OmniUpdate reserves the right to suspend access to OU Campus.

Payments for OU Campus not made within forty-five (45) days of receipt by Licensee are considered delinquent and may be subject to reasonable interest, collection, and legal fees.

Licensee agrees to pay OmniUpdate for all charges committed to via this Agreement. Licensee acknowledges that no full or partial refund of implementation fees or the initial or current year's license fee will be given if OU Campus is canceled.

OmniUpdate reserves the right to change the prices, terms, and conditions of the OU Campus at the conclusion of this Agreement’s initial term (as defined in Exhibit A). Price can only raise a maximum of five percent (5%) per year at the end of a price protected agreement. Renewal of this Agreement is not automatic, and as such any changes or extensions will not be effective absent the execution of an addendum to this Agreement or a replacement agreement.

3. SERVICE LEVEL GUARANTEE

The following OmniUpdate service guarantees are made to Licensee while operating under a SaaS License:

- A. **OU Campus Availability:** Network connections between an operating OU Campus application and the Internet will be available to the Licensee free of OU Campus interruptions 99.99% of the time, not including downtime incurred during normal or scheduled maintenance windows (as defined in

section 14). For the purposes of calculating the 99.99% figure, time from unused maintenance windows cannot be used to offset downtime that occurs outside the parameters of section 14.

- B. Interruptions: In the event a Licensee experiences a OU Campus interruption for more than thirty (30) consecutive minutes and is unable to transmit and receive information from the OU Campus system, and Licensee notifies OmniUpdate immediately of such event and OmniUpdate determines that such interruption was caused by OmniUpdate's inability to provide OU Campus for reasons within OmniUpdate's control and not as a result of any actions or inactions of Licensee equipment or any third parties (including failure of third-party equipment), and such inability is not a result of standard scheduled maintenance of the OU Campus, OmniUpdate will, upon Licensee's request, credit Licensee's account with a pro-rated amount of the total annual licensing cost equivalent to two hundred percent (200%) of the length of the interruption that exceeds the parameters set forth in section 3A. Licensee credit may not exceed the pro-rated amount equivalent to one month's OU Campus fees in any single calendar month.

4. SECURITY

OmniUpdate hosts Licensee content on a server that is secured by an authentication scheme and a firewall. Physical and electronic measures ensure that no outside unauthorized access can be obtained to the hosted staging files. Licensee acknowledges and agrees that, due to the inherent qualities of the Internet, OmniUpdate cannot prevent and, therefore, is not responsible for security breaches unrelated to its providing of the Software, nor is OmniUpdate responsible for Licensee's failure to maintain the confidentiality of Licensee's account information and/or password. Furthermore, Licensee is entirely responsible for any and all activities that occur under Licensee's account. Each party agrees to immediately notify the other of any unauthorized use of accounts or any other known breach of security. Licensee will be able to select account usernames and passwords for all users and administrators. Licensee is responsible for maintaining the confidentiality of Licensee's account usernames and passwords, and is fully responsible for all activities that occur under Licensee's accounts. Licensee agrees to (a) immediately notify OmniUpdate of any unauthorized use of Licensee's accounts involving the Software or any other known breach of security involving the Software, and (b) make good-faith efforts to ensure that Licensee's users exit (logout) from Licensee's account at the end of each session.

OmniUpdate cannot and will not be liable for any loss or damage arising from Licensee's failure to comply with the paragraph above.

5. LICENSEE CONDUCT

Licensee understands that Licensee content, whether publicly posted or privately transmitted, is the sole responsibility of the person from which such Licensee content originated. This means that the Licensee, and not OmniUpdate, is entirely responsible for all Licensee content that it sends via the OU Campus system or otherwise transmits via the OU Campus. OmniUpdate does not control the Licensee content published via the OU Campus and, as such, does not guarantee the accuracy, integrity, or quality of such Licensee content. Under no circumstances will OmniUpdate be liable in any way for any Licensee content, including, but not limited to, any errors or omissions in any Licensee content, or for any loss or damage of any kind incurred as a result of the use of any Licensee content published, emailed, or otherwise transmitted via the OU Campus. Licensee agrees to use the OU Campus in a manner consistent with any and all applicable laws and regulations. Specifically, Licensee agrees not to use the OU Campus for any unlawful, offensive, harassing, or deceitful purpose. Transmission of material, information, or software in violation of any local, state, or federal law is prohibited and is a breach of these Terms.

6. INDEMNITY

Each party agrees to indemnify and hold the other (including its subsidiaries, affiliates, officers, agents, partners, and employees) harmless from any claim or demand, including reasonable attorney's fees, made by any third party due to or arising out of Licensee content that Licensee publishes to or transmits

through the OU Campus, Licensee's use of the OU Campus, Licensee's connection to the OU Campus, either party's violation of these Terms or of any rights of another, or OmniUpdate's providing of OU Campus.

7. NO RESALE OF OU CAMPUS

OmniUpdate grants Licensee a limited, non-exclusive, non-transferable, revocable license to use the OU Campus only for its stated purposes. As a licensee of the OU Campus, Licensee may not rent, lease, grant a security interest in, sell, resell, or otherwise transfer any rights Licensee has in the use of the OU Campus. Licensee further agree not to reproduce, duplicate, copy, or exploit for any commercial purposes, any portion of the OU Campus, use of the OU Campus, or access to the OU Campus.

Under the license described in the previous paragraph, Licensee is prohibited from modifying, translating, disassembling, decompiling, or reverse engineering or otherwise attempting to derive the source code for the operation of the OU Campus or creating derivative works based on the OU Campus or parts of the OU Campus. For purposes of these Terms, "reverse engineering" shall mean the examination or analysis of the OU Campus to determine its source code, structure, organization, internal design, algorithms, or encryption devices.

8. TERMINATION OF AGREEMENT

Single-year agreements automatically terminate at the end of the day before the 12-month anniversary of the initial start of OU Campus. Continuation of OU Campus is subject to current rates at the time of the new contract agreement.

Prepaid or annually invoiced, multiyear agreements automatically terminate at the end of the period defined in Exhibit A. Renewal of such agreements is not automatic and will be done only by either (1) the execution of an addendum to this Agreement prior to the end of said period; or (2) a replacement agreement.

Annually invoiced, multiyear agreements terminated by Licensee are subject to a one-time early termination fee of \$500.00. There are no refunds for early termination of agreements.

Prepaid, multiyear agreements may be terminated by Licensee at any time. There are no refunds for early termination of agreements.

Any duly executed agreement may be terminated by either party immediately upon written notice in the event that the other materially breaches the terms of this Agreement. In such an event, the terminating party shall have the right to terminate this Agreement and all other orders forthwith. OmniUpdate will not refund any OU Campus fees unless OmniUpdate is in breach of this Agreement.

All licensee data, including any archived, backup, or offline copies, will be deleted from OmniUpdate's servers and archives within 90 days after termination of Agreement.

9. FORCE MAJEURE

Neither party shall be responsible for failure to perform under these Terms when its failure results from any of the following causes: acts of God or public enemies, war, insurrection or riot, fire, flood, explosion, earthquake or serious accident, strike, labor trouble or work interruption external to that party, or any cause beyond its reasonable control.

10. OMNIUPDATE'S PROPRIETARY RIGHTS

Licensee acknowledges and agrees that the OU Campus and any necessary software used in connection with the OU Campus contain proprietary and confidential information that is protected by applicable intellectual property and other laws. Except as expressly authorized by OmniUpdate, its partners, or

advertisers, Licensee agrees not to modify, rent, lease, loan, sell, distribute or create derivative works based on the OU Campus or the Software, in whole or in part. Licensee agrees not to access the OU Campus by any means other than through the interface that is provided by OmniUpdate for use in accessing the OU Campus.

11. LIMITATION OF LIABILITY DISCLAIMER

LICENSEE EXPRESSLY UNDERSTANDS AND AGREES THAT:

- A. THE SECURITY MECHANISMS IMPLEMENTED BY OMNIUPDATE AND ITS PARTNERS MAY HAVE INHERENT LIMITATIONS, AND LICENSEE MUST DETERMINE FOR LICENSEE’S SELF THAT THE OU CAMPUS SUFFICIENTLY MEETS LICENSEE’S REQUIREMENTS. OMNIUPDATE AND ITS PARTNERS ARE NOT RESPONSIBLE FOR LICENSEE’S DATA WHETHER RESIDING ON OMNIUPDATE OR LICENSEE SERVERS.
- B. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY LICENSEE FROM OMNIUPDATE OR THROUGH OR FROM THE OU CAMPUS SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TERMS.
- C. OMNIUPDATE AND/OR ITS SUBSIDIARIES, OFFICERS, AND EMPLOYEES SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR OTHER DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA, BUSINESS INTERRUPTION, OR OTHER INTANGIBLE LOSSES (EVEN IF OMNIUPDATE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM: (i) THE USE OR THE INABILITY TO USE THE OU CAMPUS; (ii) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND OU CAMPUS RESULTING FROM ANY GOODS, DATA, INFORMATION, OR OU CAMPUS PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE OU CAMPUS; (iii) UNAUTHORIZED ACCESS TO OR ALTERATION OF LICENSEE TRANSMISSIONS OR DATA; (iv) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE OU CAMPUS; OR (v) ANY OTHER MATTER RELATING TO THE OU CAMPUS.

12. NOTICE AND MODIFICATION

Notices required by or outlined in this Agreement shall be made certified, signature-guaranteed postal mail using the following:

OmniUpdate , Inc _____

Chabot-Las Positas Community College _____

ATTN: _____

ATTN: _____

Street Address _____

Street Address _____

City / State / ZIP _____

City / State / ZIP _____

Email address _____

Email address _____

Notification of a change to either party's contact information will be made to the other party via certified, signature-guaranteed postal mail. The non-receipt of a required notice due to personnel reassignment, departure, or neglect by the intended recipient will not constitute a failure to deliver by the delivering party.

General announcements to Licensee that are not related to the terms of this Agreement may be made via email, login notice, or regular mail.

Modifications and additions to any part of this Agreement may be made only via amendments or addendums that have been fully-executed (via signatures) by both parties.

13. TRADEMARK AND COPYRIGHT INFORMATION

OmniUpdate, the OmniUpdate logo, and other OmniUpdate logos and products and OU Campus names are trademarks of OmniUpdate (the "OmniUpdate Marks"). Without OmniUpdate's prior permission, Licensee agrees not to display or use, in any manner, the OmniUpdate Marks except as provided by the OU Campus.

Licensee, Licensee's logos, typographic representation of Licensee's name(s), and other Licensee marks and names are trademarks of Licensee (the "Licensee Marks"). Without Licensee's express written consent, OmniUpdate agrees not to display or use, in any manner, the Licensee Marks except as is necessary to provide the services described in section 1.

14. SCHEDULED MAINTENANCE

The window for regularly scheduled maintenance of OU Campus is Saturday from 8:00 p.m. to midnight (Pacific Time). During these times OU Campus may or may not be available for use. If maintenance is outside this window, the administrator of Licensee's account (as identified in section 12) will be notified via email no less than 24 hours in advance. Maintenance performed outside the regularly scheduled window (as defined above) and absent 24 hours' notice will be considered unscheduled and will count against the guarantees set forth in section 3.

15. MARKETING AND PUBLICITY

OmniUpdate may use Licensee's name in its Licensee list to include, but not be limited to, postings to the OmniUpdate website, financial reports, and prospectuses identifying Licensee as a Licensee. Licensee's account must be in good standing with OmniUpdate to remain listed. Licensee's logos and typographic representation of Licensee's name will not be used in any form at any time without Licensee's express written consent.

From time to time, OmniUpdate selects candidates from its Licensee list with whom it wishes to announce a business relationship or generate a joint press release. Should Licensee be so selected, Licensee shall have an opportunity to review and approve each press release prior to its issuance. Licensee's approval shall not be unreasonably withheld or delayed.

16. SURVIVABILITY

The provisions of sections 2, 6, 12, 13 and 15 of this Agreement shall survive its termination by either party.

Any/all other provisions associated with this Agreement shall expire at the conclusion of the term defined in Exhibit A absent the execution of extension(s) as allowed for in section 8.

17. GENERAL INFORMATION

These Terms and any Exhibits referenced within constitute the entire agreement between Licensee and OmniUpdate and govern Licensee’s use of the OU Campus and supersede any prior agreements between Licensee and OmniUpdate. Licensee also may be subject to additional terms and conditions that may apply when Licensee uses affiliate services, third-party content or third-party software. These Terms and the relationship between Licensee and OmniUpdate shall be governed by the laws of the State of California without regard to its conflict of law provisions. Licensee and OmniUpdate agree to submit to the personal and exclusive jurisdiction of the courts located within the State of California. The failure of OmniUpdate to exercise or enforce any right or provision of these Terms shall not constitute a waiver of such right or provision. If any provision of these Terms is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of these Terms remain in full force and effect. Licensee and OmniUpdate agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the OU Campus or these Terms must be filed within one (1) year after such claim or cause of action arose or be forever barred. The section titles in the agreement are solely used for the convenience of the parties and have no legal or contractual significance. OmniUpdate provides OU Campus to Licensee subject to these Terms. Unless explicitly stated otherwise, any new feature that augments or enhances current version of OU Campus, including the releases of OU Campus, shall be subject to these same Terms.

AGREED AND ACCEPTED BY:

The signatories below are officers of their respective organizations and each has the approval and authority to make this intent on behalf of the organization:

OmniUpdate:

**Chabot-Las Positas Community
College:**

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

Date

Exhibit A

Term and Commitments – Chabot-Las Positas Community College District

Chabot-Las Positas Community College District is engaging in a one (1) year price-protected contract with OmniUpdate for the Software-as-a-Service implementation of the web CMS OU Campus, with OmniUpdate hosting the application for CLPCCD on OmniUpdate’s own web servers, and CLPCCD responsible for managing their own production servers.

This is for an unlimited user license of OU Campus, including implementation, training, modules, license, and support for a first year total cost of \$112,500.00 and ongoing annual license and support costs of \$45,000.00. This includes Gold Support which allows ten named users from CLPCCD to contact the OmniUpdate support team by phone or email, with unlimited annual support tickets. Details of these commitments, including the associated costs, can be found in Exhibit B.

This Agreement and all provisions within shall be valid from May 1, 2016 until June 30, 2017 (the “Term”). Invoices will be received by Licensee each year no less than 30 days in advance of July 1.

Total Price for May 1, 2016 – June 30, 2017: \$112,500.00

Annual Recurring Cost – due July 1, 2017: \$45,000

The signatories below are officers of their respective organizations and each has the approval and authority to make this intent on behalf of the organization.

OmniUpdate:

Chabot-Las Positas Community College District:

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

Date

Exhibit B

Committed Services – Chabot-Las Positas Community College District

Enterprise Software-as-a-Service (SaaS)

OmniUpdate Hosts OU Campus – Chabot/Las Positas hosts production webserver

License	Enterprise SaaS License - Unlimited authorized users	\$25,000 Annual Cost
Implementation	<p>Up to 500 hours of project planning and web development services for OU Campus deployment and Base Implementation. 500 hours' total can be used for any implementation need, and are roughly allocated for 200 hours for each College as well implementation hours like the 50 hours for the faculty directory.</p> <ul style="list-style-type: none"> - Setup staging server and FTP/SFTP access to target web server - Development and testing of custom XML/XSL templates - Quality Assurance and Delivery 	\$60,000 One Time Cost
Live Delivery Platform	Enables a rich set of Web 2.0 applications (e.g., forms, polls, surveys) Includes installation of Server-Side Module and implementation of LDP	
Training	Up to 20 hours of webinar-based training: Administrator, Train-the-Trainer, and Template Framework sessions; user guides and training materials provided. Complimentary pass for two (2) people to OmniUpdate's 2017 User Training Conference; includes workshops	
Faculty Directory	50 hours used from implementation hours for buildout and implementation of custom online Faculty Directory according to college specifications	
OU Mashup™	Social media hub for dynamic display of multiple network feeds on public site; includes Facebook, Twitter, Instagram, YouTube, Flickr, etc. Template custom-built or integrated with existing templates	\$7,500 One Time Cost
OU Insights	<p>Reporting functionality on key areas of your site's health outside of the publishing workflow, including SEO, accessibility, links, and spelling. Scores, recommended actions, and drill-down capabilities allow administrators and Marketing team to uncover problems and improve areas that have a critical impact on your site visitors' user experience.</p> <p>Up to 20,000 pages: \$10,000 Up to 50,000 pages: \$15,000</p>	\$10,000 annually for up to 20,000 pages
OU Calendar™	<p>Implementation and configuration of calendar; includes calendar software, user authentication setup, product documentation</p> <p>Installation on single server; OU Campus theme with custom color adjustments; workflow and approval planning; standard administrator and submissions clients; 1 recorded WebEx training session</p>	Included
Gold Support	<p>Up to 10 contact personnel with support via web form, email, or phone Unlimited support tickets per year Server-side module support for Live Delivery Platform (LDP) Access to online help documents, knowledge base, and the OmniUpdate Community Network (OCN)</p>	\$10,000

Total Year 1 Cost – SaaS License, Implementation, and Support	\$112,500
Annual Renewal Cost (after Year 1) – SaaS License & Support, Annual OU Insights Cost (includes upgrades)	\$45,000