

Terms and Conditions of Sale:

THE FOLLOWING TERMS AND CONDITIONS, TOGETHER WITH ANY OTHER TERMS AND CONDITIONS SPECIFICALLY AGREED TO IN WRITING BY **OPTIMUS TECHNOLOGIES, INC.** ("OPTIMUS") CONSTITUTE THIS AGREEMENT ("Terms and Conditions Agreement" or "Agreement") AND SHALL APPLY TO ALL INVOICES AND PURCHASE ORDERS ("Order(s)") FROM, AND SALES OF GOODS ("Goods" as defined hereinafter) OR SERVICES ("Services" as defined hereinafter) TO CUSTOMER ("Customer"). ANY ACCEPTANCE OF ANY ORDER OF CUSTOMER IS CONDITIONED UPON THESE TERMS AND CONDITIONS. ANY ADDITIONAL OR DIFFERENT TERMS AND CONDITIONS PROPOSED BY CUSTOMER IN ANY DOCUMENT ARE OBJECTED TO AND SHALL NOT BE BINDING UPON OPTIMUS.

1. Scope of Work.

OPTIMUS, or a subcontractor acting on OPTIMUS' behalf, shall provide to Customer the core system components and goods for the fuel systems, and all software and technology integrated into the fuel systems, as more fully described and detailed in the Optimus Vector System Proposal (the "**Proposal**") attached hereto and made a part hereof by this reference (the "Goods"), and perform and provide those installation, implementation, and training services specifically identified in the **Proposal** (the "Services") in accordance with the terms and conditions of this Agreement during the Term (as defined in **Section 2**). The Services will also include an "Annual Technology Subscription" and the "Installation Services" as described in the **Proposal**. The Parties acknowledge that OPTIMUS may, if identified in the **Proposal**, provide Goods, Services, or both Goods and Services. The provision of Goods and Services hereunder may be together referred to herein as the "Work". The Work identified in this Agreement cannot be changed or cancelled, in whole or in part, without OPTIMUS' prior written consent (except as provided in **Section 8(B)**). In the event Customer requests such change or cancellation, it shall be at OPTIMUS' sole option and subject to extra charges and changes in terms as reasonably determined by OPTIMUS in its sole discretion. If OPTIMUS elects to use subcontractors to perform any of the Work and selects the subcontractors itself, it shall be fully responsible for the acts or omissions of the subcontractors. If Customer directs OPTIMUS to work with particular subcontractors of Customer's choosing, OPTIMUS will not be responsible for the acts or omissions of such subcontractors.

2. Term.

A. The term of this Agreement shall commence on the date first set forth by Customer Order and shall remain in effect until the later to occur of the following: (i) expiration of the applicable warranty period for the Goods; (ii) completion of the performance of the Services and expiration of the applicable warranty period for the Services; and (iii) expiration or termination of the Annual Technology Subscription (the "Term") unless earlier terminated pursuant to the express terms set forth in **Section 8** herein.

B. Sections 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19 and 21 hereof and the PERFORMANCE DATA SUBSCRIPTION TERMS attached hereto and made a part hereof by this reference ("PDST") shall survive the expiration or termination of this Terms and Conditions Agreement.

3. Pricing and Payment Terms.

A. The price of the Work shall be those amounts set forth in the **Proposal** (the "Price").

B. Unless otherwise set forth in the **Proposal**, Payments due to OPTIMUS shall be made by Customer no later than thirty (30) days after the date of Customer's receipt of an applicable invoice (the "Payment Period"). All payments shall be in U.S. Dollars. OPTIMUS shall be entitled to charge to Customer interest at a monthly rate equal to the lesser of one and one-half percent (1.5%) or the highest rate permitted by applicable law in the event payments are not remitted on or before their respective due dates.

C. In addition to the Price, Customer shall also be responsible for, and shall timely pay, any and all taxes, duties, assessments or charges (including, without limitation, sales taxes, if applicable) levied by any taxing authority with respect to the Goods and Services (except for income-related taxes incurred by OPTIMUS) ("Taxes"). OPTIMUS shall include the applicable Taxes on each invoice to Customer, and upon payment by Customer, shall timely remit the Taxes to the applicable taxing authority.

4. Completion, Acceptance, and Warranty.

When the Installation Services for the Customer's Original Vehicles meet the completion criteria, provided upon request, (the "Completion Criteria"), OPTIMUS or its approved installer (the "Authorized Installer") shall so notify Customer and provide Customer a certificate certifying that the Completion Criteria have been met and the date thereof (such notice, the "Notice of Completion and Acceptance of Installation Services" shall be provided upon request).

Customer shall either (i) reject such Notice of Completion and Acceptance of Installation Services and refuse to accept the Work, and state what Completion Criteria the Authorized Installer failed to achieve; or (ii) accept the Work and sign the Notice of Completion and Acceptance of Installation Services, with acceptance of all Goods and Services provided as part of the Installation Services being deemed to occur on the date set forth in such Notice of Completion and Acceptance of Installation Services.

If Customer rejects the Work, Authorized Installer shall (i) promptly correct the problem(s); or (ii) provide to Customer a plan and schedule for remedying the deficiencies specified in Customer's rejection if the corrections cannot occur immediately. Authorized Installer shall carry out such correction or plan at its own cost and expense, and, upon completion thereof, shall issue a new Notice of Completion and Acceptance of Installation Services.

The foregoing procedure shall be repeated until such time that either party provides a notice to terminate the specific Installation Services project, in accordance with **Section 8** hereof. To the extent Customer has not, within sixty (60) days of initial delivery of the Notice of Completion and Acceptance of Installation Services either: (x) signed and delivered to OPTIMUS the Notice of Completion and Acceptance of Installation Services, or (y) provided a notice of termination in accordance with **Section 8** hereof, the Installation Services project shall be deemed to be fully accepted by Customer.

If, following acceptance, Customer determines that the Goods or Services are not in conformity with the scope of Work set forth in the **Proposal**, it shall immediately notify OPTIMUS in writing and pursue, if available, a permitted warranty claim in accordance with the provisions set forth in the **OPTIMUS STATEMENT OF WARRANTY** attached hereto and made a part hereof by this reference, which serves as the sole and exclusive warranty for the Work.

5. Limitation of Liability.

A. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT (AND EXCEPTING OPTIMUS' INDEMNIFICATION OBLIGATIONS FOR THIRD PARTY CLAIMS, DAMAGES CAUSED BY A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR BREACHES OF **SECTION 11**), IN NO EVENT SHALL EITHER PARTY BE RESPONSIBLE OR LIABLE TO THE OTHER FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED, EVEN IF ADVISED OF THE POSSIBILITY THEREOF.

B. OPTIMUS' MAXIMUM LIABILITY TO CUSTOMER UNDER THIS AGREEMENT, REGARDLESS OF THE THEORY ON WHICH ANY CLAIM IS BASED (INCLUDING BREACH OF WARRANTY, BREACH OF CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER CAUSE OR BASIS) SHALL NOT EXCEED IN THE AGGREGATE \$50,000.00 US DOLLARS (USD) FOR EACH INSTALLATION OF A VECTOR SYSTEM IN A CUSTOMER'S ORIGINAL VEHICLE; PROVIDED THAT, TO THE EXTENT CUSTOMER HAS NOT MAINTAINED THE ANNUAL TECHNOLOGY SUBSCRIPTION, OPTIMUS' LIABILITY WILL BE FURTHER LIMITED TO ANY REMAINING WARRANTY PROTECTION AS SPECIFIED IN THE **OPTIMUS STATEMENT OF WARRANTY**. FROM AND AFTER THE EARLIER TO OCCUR OF: (I) FIVE (5) YEARS FOLLOWING RECEIPT BY OPTIMUS OF THE APPLICABLE NOTICE OF COMPLETION AND ACCEPTANCE OF INSTALLATION SERVICES; OR (II) EXPIRATION OF THE MANUFACTURER'S WARRANTY APPLICABLE TO THE CUSTOMER'S ORIGINAL VEHICLES' COVERED PARTS (AS DEFINED IN THE **OPTIMUS STATEMENT OF WARRANTY**) BUT IN NO EVENT LESS THAN ONE (1) YEAR FOLLOWING RECEIPT BY OPTIMUS OF THE APPLICABLE NOTICE OF COMPLETION AND ACCEPTANCE OF INSTALLATION SERVICES, OPTIMUS SHALL HAVE NO FURTHER LIABILITY TO CUSTOMER IN CONNECTION WITH THE GOODS OR SERVICES. THE LIMITATIONS OF OPTIMUS' LIABILITY UNDER THIS SUBSECTION SHALL NOT APPLY IN THE EVENT OF OPTIMUS' GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR TO OPTIMUS' INDEMNIFICATION OBLIGATIONS FOR THIRD PARTY CLAIMS, OR TO OPTIMUS' BREACH OF **SECTION 11**.

6. Software; Performance Data; Annual Technology Subscription.

To the extent that the Goods include software (the "Software"), Customer hereby acknowledges and agrees that: (i) that from time to time, the Software may download and install upgrades, updates and additional features from OPTIMUS in order to improve, enhance, and further develop the Software and other components of the Work; and (ii) Customer shall not modify, reverse engineer, create derivative works of, decompile, or otherwise attempt to extract source code from OPTIMUS or from the Goods, Software or Performance Data (as defined below). Customer agrees to use the Software and other components of the Work for its internal business purposes only, and not for the commercialization of the Software or the Work and shall not (or permit any other person to) sell, resell, license, rent or lease the Software or the Work. Customer hereby assigns and/or grants to OPTIMUS any and all of its rights, rights, title and interest to any vehicle performance data collected by the Software or otherwise, which data may include, without limitation, mileage, fuel consumption, system performance, system diagnostics, technical data for use in troubleshooting, GPS-tracking refueling dates and times, and quantity and fuel type dispensed (collectively, the "Performance Data") for any business purpose whatsoever. Each party's obligations related to the Performance Data is set forth in the Performance Data Subscription Terms, which are attached hereto as the **PERFORMANCE DATA SUBSCRIPTION TERMS** and made a part of this Agreement by this reference. Customer acknowledges and agrees that Performance Data will be created as part of the Work performed, and Customer shall be bound by the Performance Data Subscription Terms, regardless of whether Customer elects to include an Annual Technology Subscription in the Goods or not. Customer agrees to use the Performance Data for its internal business purposes only, and not for the commercialization of the Performance Data and shall not (or permit any other person to) disclose such Performance Data to any third party or sell, resell, license, rent or lease the Performance Data. Customer acknowledges and agrees that the disclosure of Performance Data in accordance with this **Section 6** in a manner that is not personally identifiable to Customer shall not be interpreted to result in such Performance Data becoming a part of the public domain for the purposes of **Section 11** or otherwise.

7. Original Vehicles and Products.

A. In the event Customer requests changes or modifications to the Work or the Original Vehicles and Other Products (as defined below) beyond what is contemplated in the **Proposal**, such requests may result in an additional charge to Customer. OPTIMUS shall provide a quote for the additionally requested changes or modifications prior to the performance of such changes or modifications.

B. Customer acknowledges and agrees that OPTIMUS' products are unique, complex and will be interacting with and integrated into Customer's existing vehicles (the "Original Vehicles") and/or other products ("Other Products," and together with the Original Vehicles, collectively the "Original Vehicles and Other Products"). As such, even though OPTIMUS has made every attempt to determine the impact that the Work could potentially have on the Original Vehicles and Other Products, OPTIMUS is not capable of anticipating the full impact to such Original Vehicles and Other Products.

8. Termination.

A. In the event that Customer fails to perform any of its obligations pursuant to and in accordance with the terms and subject to the conditions of this Agreement, and such failure is not cured within forty-five (45) days after Customer's receipt of OPTIMUS' written notice alleging such failure, OPTIMUS may terminate this Agreement by providing written notice to Customer; provided that, OPTIMUS may immediately terminate this Agreement upon breach by Customer of the terms of **Section 6** or **Section 11** hereof. If such a termination occurs, OPTIMUS shall be entitled to receive and Customer shall be required to pay: (i) OPTIMUS' costs and expenses, including, without limitation, costs of goods, labor (both direct and third party costs) and services incurred with respect to the performance of Work up through the date of such termination; and (ii) an additional termination fee equal to 25% of the total Price paid by Customer up to the date of termination, should the termination occur prior to completion and acceptance of Installation Services; which the parties acknowledge is not intended as a penalty but is a reasonable approximation of the damages that would be suffered by OPTIMUS. OPTIMUS will invoice Customer for such costs, expenses and fees within fifteen (15) days following written notice of termination, and Customer shall pay such invoice within thirty (30) days of receipt thereof plus interest as set forth in **Section 3(C)** hereof. In addition to the foregoing, OPTIMUS shall also be entitled to pursue any and all remedies available to it at law or in equity.

B. In the event that OPTIMUS fails to perform any of its obligations in accordance with the terms and subject to the conditions of this Agreement, and such failure is not cured within forty-five (45) days after OPTIMUS' receipt of Customer's written notice alleging such failure, Customer may terminate this Agreement by providing written notice to OPTIMUS. Subject to the limitations of liability contained in this Agreement, Customer shall also be entitled to pursue any and all remedies available to it at law or in equity.

9. Excusable Delays; Unforeseen Events.

OPTIMUS shall not be responsible or liable for a failure to perform the Work or delays in the performance of Work hereunder arising from: (i) acts of God or a public enemy; (ii) acts of the Government of the United States or any political subdivision or any department or regulatory agency thereof or entity created thereby; (iii) act of any person or entity engaged in subversive activity, sabotage or terrorism; (iv) wars or riots; (v) fires, floods, explosions or other catastrophes; (vi) epidemics and quarantine restrictions; (vii) third-party strikes, slowdowns, lockouts or labor stoppages or shortages or disputes of any kind; (viii) embargoes; (ix) unusually severe weather; (x) delays of a supplier due to any of the above causes or events; or (xi) other causes or events beyond the reasonable control of OPTIMUS in failing to perform hereunder; provided, however, that if any of the events listed above lasts for more than ninety (90) days after receipt of notice to OPTIMUS by Customer, Customer may terminate this Agreement without penalty at the end of such ninety (90) day period and OPTIMUS shall promptly refund to Customer any money paid by Customer for Work that was delayed as a result of the same. The foregoing shall be in addition to, and not in limitation of any excuses for non-performance available to OPTIMUS under the Uniform Commercial Code or any other applicable law.

10. Independent Contractor.

The Parties agree that OPTIMUS shall at all times serve as an independent contractor under this Agreement, and not as an agent, servant or employee of Customer.

11. Confidentiality; Ownership of Technology.

A. The Parties acknowledge that in connection with the performance of this Agreement, each Party will be receiving (the "Recipient") from the other Party (the "Discloser") information that is proprietary or confidential in nature to the Discloser.

B. For purposes of this Agreement, the term "Confidential Information" shall include any and all information, whether oral, written or in electronic form, disclosed or communicated by the Discloser to the Recipient including, but not limited to, information relating to the Discloser's technology, patents, trade secrets, other intellectual property, customer lists, supplier lists, supply and logistics information, methods, processes, manufacturing techniques, research and development information, innovations, ideas, changes or modifications to its products, training and instructional materials, specifications, drawings and technical specifications. Confidential Information shall not include any information that the Recipient can demonstrate: (i) enters into or is already in the public domain without a breach of this Agreement; (ii) is independently developed by the Recipient without using the Discloser's Confidential Information; or (iii) is known or received by the Recipient from a third party having no obligation not to disclose the Confidential Information. Without otherwise limiting the scope of Customer's Confidential Information, only Performance Data which is specifically identifiable to Customer is included in Customer's Confidential Information.

C. Each Party agrees that Confidential Information is exclusively owned by the applicable Discloser. Each Party agrees to maintain the Confidential Information it receives from the Discloser in confidence, and not to disclose the Confidential Information, or any part thereof, to any third party without the prior express written consent of the Discloser. The Recipient agrees to protect the Discloser's Confidential Information in a reasonable manner. Each Party further agrees that upon termination or expiration of this Agreement, it will promptly return in the same good condition as when received, reasonable wear and tear from normal use excepted, all of the Discloser's Confidential Information and other information not otherwise disposed of, in accordance with the Discloser's instructions.

D. The Recipient agrees that: (i) improper use or disclosure of the Discloser's Confidential Information shall cause irreparable harm to the Discloser and monetary damages for such improper use or disclosure will be inadequate and will not give full and sufficient relief to the Discloser; and (ii) if such improper use or disclosure occurs, the Discloser shall have, in addition to any and all other remedies available under this Agreement or in equity or law, the right to equitable relief (by way of specific performance and/or injunctive relief and without the necessity of posting a bond) to prevent any further improper use, disclosure, breach or threatened breach.

E. The Parties acknowledge and agree that all of OPTIMUS' product technology including, without limitation, its patents, its Confidential Information and any innovations, new developments, enhancements or products developed before, during or after the performance of the Work, shall remain the sole and exclusive property of OPTIMUS. Customer shall not use, and is hereby prohibited from using, any of the foregoing product technology, OPTIMUS' Confidential Information, OPTIMUS' products or the Work for any purpose whatsoever other than for the specific and intended use contemplated by this Agreement.

12. Customer's Original Vehicles.

A. If Customer sells, conveys, assigns or otherwise transfers (collectively, "Transfer") title to any of its personal property (including, without limitation, any Original Vehicles) to which all or any part of the Work or Goods are affixed, the remaining duration of the Covered Parts Warranty Period and the Vector System Warranty Period, if any, shall transfer to the buyer of the property but only if such buyer executes an OPTIMUS Warranties Transfer Certificate (to be provided upon request) certifying that it is bound by all of the terms, conditions, requirements, obligations and limitations of the OPTIMUS Warranty Program and Warranty including, without limitation, the limitations set forth in **OPTIMUS STATEMENT OF WARRANTY** and limitations of liability set forth in **Section 5** of this Agreement. If the Vector System Warranty and the Covered Parts Warranty have expired or the buyer fails to execute the OPTIMUS Warranties Transfer Certificate, then the Goods affixed to the transferred property shall be Transferred to the buyer in their "AS IS, WHERE IS" condition and OPTIMUS shall have no post-Transfer obligations or liabilities to such buyer; provided that, any such buyer shall continue to be subject to the provision of **Section 11** relating to confidentiality and OPTIMUS' ownership of product technology.

B. Customer shall, upon reasonable request, provide OPTIMUS with a commercially reasonable number of service records associated with vehicles to which all or any part of the Work or Goods are affixed or associated ("Service Records"). OPTIMUS may share Service Records with its contractors upon the prior written approval of Customer, which approval Customer shall not unreasonably withhold, condition or delay.

C. OPTIMUS may affix certain decals bearing OPTIMUS-related logos (the "Decal(s)") on Customer's vehicles to identify that such vehicles have been equipped with the Goods, are operating on OPTIMUS-approved fuel, or both, as applicable upon Customer's prior approval of the size and location of such Decals, which approval Customer shall not unreasonably withhold, condition or delay.

13. Indemnification.

Each Party (the "Indemnitor") agrees to defend, indemnify and hold the other Party, including its affiliates, and all of their respective officers, directors, agents and employees (each, an "Indemnitee"), harmless from and against any and all claims, demands, liabilities, losses, damages, actions, judgments, costs, expenses, fines and reasonable attorneys' fees (collectively, "Claims") asserted by a third party against an Indemnitee arising out of, related to or in connection with: (A) any breach of this Agreement by the Indemnitor; (B) any infringement or misappropriation of any patent, copyright, trade secret, trademark, service mark, trade name, proprietary information of other intellectual property rights alleged to have occurred because of the work; (C) any damage to or loss or destruction of any real or tangible personal property in the possession or under the control of the Indemnitor; (D) the Indemnitor's grossly negligent acts or omissions and/or willful misconduct in performing the Work; (E) the death or bodily injury of any agent, employee, subcontractor, customer, business invitee or business visitor of the Indemnitor; or (F) any violation by the Indemnitor of any applicable law.

Any Indemnitee seeking indemnification for a Claim made by a third party under this Section shall give prompt written notice to the Indemnitor of such Claim; provided, however, the failure by an Indemnitee to give such notice shall not relieve the Indemnitor of its obligations under this Section, except to the extent that the Indemnitor is materially prejudiced as a result of such failure. In addition, the Indemnitee shall allow the Indemnitor to direct the defense and settlement of any such Claim, with counsel of the Indemnitor's choosing, and shall provide the Indemnitor, at the Indemnitor's expense, with such information and assistance as is reasonably necessary for the defense and settlement of the Claim. The Indemnitor shall not be liable for any settlement of an action effected without its written consent (which consent shall not be unreasonably withheld or delayed), nor shall the Indemnitor settle any such action that affects the Indemnitee's rights or interests without the written consent of the Indemnitee. The Indemnitor shall not consent to the entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by the claimant or plaintiff to the Indemnitee a release from all liability with respect to the Claim.

14. Notices.

All notices and invoices given pursuant to or in accordance with this Agreement shall be in writing and transmitted by personal delivery, overnight express mail, e-mail, or facsimile (evidenced by printed confirmation of delivery). Any such notice or communication hereunder, and every payment hereunder, shall be sent to the Parties at the addresses identified in the **Proposal**, or such other address as either Party may designate from time to time.

15. No Waiver of Rights.

A failure by either Party to assert its right(s) under this Agreement shall not be deemed a waiver of such right(s), nor shall any such waiver be implied. No waiver by one (1) of the Parties of any breach of this Agreement, or with respect to any right under this Agreement, shall extend to or affect any subsequent breach or right, either of a like or different kind, or impair any right consequent thereon.

16. Assignment.

This Agreement shall not be assigned, transferred or delegated, by either party in whole or in part, by operation of law or otherwise, without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed.

17. Severability of Provisions.

The invalidity under applicable law of any provision(s) of this Agreement shall not affect the validity of any other provision(s) of this Agreement, and in the event that any provision(s) hereof be determined to be invalid or otherwise illegal, the Parties intend that this Agreement shall remain effective and shall be construed in accordance with its terms as if the invalid or illegal provision(s) was not contained herein.

18. Choice of Law; Dispute Resolution; Waiver of Jury Trial.

This Agreement shall be construed by and interpreted in accordance with the laws of the State of Pennsylvania, without regard to its conflict of laws principles. The Parties consent to the exclusive jurisdiction of the federal and state courts located in Allegheny County, Pennsylvania. EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF THE PARTIES IN THE PERFORMANCE OR ENFORCEMENT HEREOF.

19. Entire Agreement; Amendments; Construction.

This Agreement, including the Recitals hereof and all Attachments (specifically the Optimus Statement of Warranty and the Performance Data Subscription Terms) hereto, which are hereby fully incorporated into this Agreement, constitutes the entire agreement and understanding by and between the Parties regarding the subject matter hereof, and there are no other representations, agreements or understandings, oral or written, express or implied, between the Parties relating thereto. This Agreement may only be amended by means of a writing subsequently executed by both Parties that states that it is intended as an amendment to this Agreement. In the event of a conflict between this Agreement and any Attachments, the Attachments shall control.

Performance Data Subscription Terms:

These Performance Data Subscription Terms ("PDST") describe Customer's rights and obligations with respect to Performance Data and as a purchaser of Optimus' Annual Technology Subscription (which includes access to Performance Data, access to Software upgrades, and access to Optimus technical support services), as such terms are further described in the Terms and Conditions Agreement (the "Subscription Services"). All capitalized terms not otherwise defined in these PDST shall have the meanings ascribed to them in the Terms and Conditions Agreement.

1. Subscription Services; Restriction on Use; Ownership.

1.1. **Subscription; License.** In connection with the Work provided under the Proposal, Optimus collects and retains Performance Data related to a Customer's vehicle that is covered by the Terms and Conditions Agreement. Customer hereby assigns and/or grants to OPTIMUS any and all of its rights, title and interest to any vehicle Performance Data collected by the Software or otherwise. Subject to the terms and conditions of these PDST and the Terms and Conditions Agreement, Optimus hereby grants to Customer a limited, non-exclusive, non-transferable, revocable right to download, access, and use the Performance Data solely in connection with Customer's internal business purposes.

1.2. **Compliance with Laws.** In connection with its use of the Performance Data, both Customer and OPTIMUS shall (i) comply with all applicable national, international, federal, state, and local laws, rules, and regulations and self-regulatory guidelines, including, without limitation, laws relating to privacy and unfair business practices; and (ii) establish, implement, and maintain reasonable physical, electronic, and procedural safeguards to maintain the security and confidentiality of the Performance Data.

1.3. **Restrictions on Use of the Data.** Customer shall not (and shall not authorize or knowingly permit any third party to make) any use or disclosure of the Performance Data without OPTIMUS' prior written consent or otherwise expressly permitted under these PDST. Without limiting the foregoing, Customer shall not (and shall not authorize or knowingly permit any third party to): (i) publish the Performance Data, in whole or in part; or (ii) resell, distribute, or sublicense the Performance Data.

1.4. **Optimus Obligations.** OPTIMUS shall not disclose any Performance Data that identifies Customer to any third party without Customer's prior written consent. OPTIMUS shall be entitled to freely disclose Performance Data that does not include any personally identifiable information of Customer.

1.5. **Ownership.** Consistent with and subject to the terms of the Terms and Conditions Agreement, Optimus owns and shall own all rights, title, and interest in and to the Performance Data. Customer has no rights with respect to the Performance Data other than those expressly granted hereunder.

2. Subscription Fee; Term; Cancellation of Subscription Services.

2.1. **Subscription Fee.** The annual cost of the Subscription Services for each PDST Term shall be described in the accompanying **Proposal** ("Annual Subscription Fee").

2.2. **Term.** The "Initial PDST Term" for each vehicle is one (1) year from the receipt by OPTIMUS of the Notice of Completion and Acceptance of Installation Services. The Initial PDST Term will automatically renew for subsequent annual renewal terms ("Renewal Terms") on the expiration of the then current Initial PDST Term or Renewal Term. Customer will be provided a notice of renewal sixty (60) days in advance of the expiration of the Initial PDST Term and each Renewal Term (collectively, the Initial PDST Term and subsequent Renewal Terms shall be the "PDST Term"). OPTIMUS will then send a PDST Term renewal invoice forty-five (45) days prior to the commencement of a Renewal Term. Customer shall pay all invoices in full within thirty (30) days of receipt.

2.3. **Cancellation of Subscription Services.** Customer may cancel the Subscription Services at any time by providing a written notice of non-renewal no less than thirty (30) days prior to the expiration of the PDST Term; provided that, Customer acknowledges that failure to maintain the Subscription Services will serve to void the Vector System Warranty and the Covered Parts Warranty. Failure to renew the Subscription Services will also result in the Customer losing access to any Performance Data from the OPTIMUS system, current pricing on any Software upgrades, and potential hourly charges for access to OPTIMUS technical support. In addition, Customer shall not be entitled to any refund of pre-paid Subscription Fees in the event that Customer cancels the Subscription Services. For purposes of clarity, subject to Section 6 of the Terms and Conditions Agreement, OPTIMUS shall continue to be entitled to collect and use Customer's performance data, even if Customer fails to maintain the Subscription Services.

2.4. **Renewing Subscription Services After Cancellation.** If a Customer cancels their Subscription Services pursuant to these PDST, and later decides to renew the Subscription Services, Customer will be obligated to pay prior to the start of the Renewal Term, (i) prorated Annual Subscription Fees for any time Customer was without coverage, as well as (ii) the Annual Subscription Fee for that Renewal Term. This provides Customer with access to any available historical Performance Data from the covered vehicles, and any OPTIMUS Software upgrades that were missed. Renewal of the Subscription Services after a lapse will not reinstate the Vector System Warranty or the Covered Parts Warranty. Reinstatement of this coverage will be at OPTIMUS' sole discretion. Any costs for OPTIMUS to reinstate the Vector System Warranty or the Covered Parts Warranty will be the responsibility of the Customer.

3. Additional Termination Rights.

3.1. **Termination for Breach.** In the event of a material breach of these PDST by a party, the other party may terminate this these PDST by giving fourteen (14) days prior, written notice to the breaching party; provided, however, that these PDST shall not terminate if the breaching party has cured the breach before the expiration of such fourteen (14) day period. In addition, in the event Customer fails to pay any Annual Subscription Fee in full when due, OPTIMUS may, at any time and without notice, suspend Customer's access to the Subscription Services and as a result, the Performance Data.

3.2. **Effect of Termination.** Upon termination of these PDST, (a) all rights granted hereunder to Customer shall immediately cease, and OPTIMUS shall immediately suspend Customer's access to the Subscription Services and as a result, the Performance Data; provided, however, that Customer may retain any Performance Data copied, transcribed, or downloaded prior to the termination date.

3.3. **Survival.** The following provisions shall survive termination of these PDST: Section 1.1 ("License"), Section 1.2 ("Compliance with Laws"), Section 1.4 ("Ownership"), Section 2.4 ("Renewing Subscription Services After Cancellation"), Section 3.2 ("Effect of Termination"), Section 4 ("Disclaimer"), Section 5 ("Limitation of Liability"), Section 6 ("Acknowledgement of OPTIMUS' Use of Performance Data as it Relates to Customer's Vehicle"), and this Section 3.3 ("Survival").

4. **Disclaimer.** THE PERFORMANCE DATA IS PROVIDED "AS IS" AND "AS AVAILABLE," AND OPTIMUS MAKES NO WARRANTY WITH RESPECT TO THE PERFORMANCE DATA OR OTHERWISE IN CONNECTION WITH THESE PDST AND HEREBY DISCLAIMS ANY AND ALL EXPRESS, IMPLIED, OR STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF TITLE, MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, AVAILABILITY, ERROR-FREE OR UNINTERRUPTED OPERATION AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE TO THE EXTENT THAT OPTIMUS MAY NOT AS A MATTER OF APPLICABLE LAW DISCLAIM ANY WARRANTY, THE SCOPE AND DURATION OF SUCH WARRANTY SHALL BE THE MINIMUM PERMITTED UNDER SUCH LAW.

5. **Limitation of Liability.** EXCEPT IN THE EVENT OF A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO EACH OTHER FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND (INCLUDING, BUT NOT LIMITED TO, LOST REVENUES OR PROFITS) ARISING FROM OR RELATING TO THESE PDST, REGARDLESS OF WHETHER THE APPLICABLE PARTY WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF. EACH PARTY'S AGGREGATE LIABILITY FOR DIRECT DAMAGES UNDER THESE PDST SHALL NOT EXCEED THE FEES PAID BY CUSTOMER UNDER THE CUSTOMER AGREEMENT DURING THE PERIOD TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO THE CLAIM.

6. **Acknowledgement of OPTIMUS' Use of Performance Data as it Relates to Customer's Vehicle.** CUSTOMER HEREBY ACKNOWLEDGES THAT THE GOODS CONTAIN SOFTWARE THAT COLLECTS PERFORMANCE DATA ON CUSTOMER'S VEHICLE. OPTIMUS COLLECTS AND/OR STORES INFORMATION ABOUT CUSTOMER'S VEHICLE, INCLUDING MILEAGE, FUEL CONSUMPTION, SYSTEM PERFORMANCE, SYSTEM DIAGNOSTICS, TECHNICAL DATA FOR USE IN TROUBLESHOOTING, GPS-TRACKING, REFUELING DATES AND TIMES, AND QUANTITY AND FUEL TYPE DISPENSED. THE SOFTWARE HAS THE ABILITY TO TRANSMIT INFORMATION TO A CENTRAL COMMUNICATIONS SYSTEM OR EXTERNAL

DEVICE. CUSTOMER EXPRESSLY CONSENTS TO OPTIMUS' ACCESS TO THE GOODS AND SOFTWARE AND THE INFORMATION SUCH GOODS AND SOFTWARE CAPTURE AND TRANSMIT. CUSTOMER EXPRESSLY CONSENTS TO OPTIMUS' COLLECTION OF PERFORMANCE DATA FROM CUSTOMER'S VEHICLE. ADDITIONALLY, CUSTOMER ACKNOWLEDGES THAT IT SHALL FULFILL THE PURPOSE OF THE SUBSCRIPTION SERVICES FOR OPTIMUS TO ACCESS AND USE PERFORMANCE DATA IN ORDER TO: UNDERSTAND ALL ASPECTS OF THE USE AND OPERATION OF CUSTOMER'S VEHICLE, HELP FACILITATE MAINTENANCE AND REPAIRS TO CUSTOMER'S VEHICLE, COLLECT AND SHARE EMISSIONS DATA, AGGREGATE AND EXAMINE ALL COLLECTED INFORMATION WITH LIKE INFORMATION FROM OTHER CUSTOMERS, MAKE REPORTS TO REGULATORY AUTHORITIES, IF APPLICABLE, BASED ON COLLECTED INFORMATION, AND MONITOR AND OPTIMIZE CUSTOMER'S ORIGINAL VEHICLE MAINTENANCE AND SERVICE.

Optimus Statement of Warranty:

I. Vector System Warranty

A. For a period of two (2) years from receipt by OPTIMUS of the signed Notice of Completion and Acceptance of Installation Services accepting the Work ("Vector System Warranty Period"), OPTIMUS warrants that the Goods shall be free from defects in material and workmanship and that the Services will materially conform to the scope of Work and specifications, if any, set forth in the accompanying **Proposal**, and the Completion Criteria (the "Vector System Warranty"). The foregoing warranty excludes disposable or consumable Goods, including, without limitation, fuel lines, filters, clamps, screws, etc. as well as rust deterioration of the Goods. Goods sold to Customer, but not manufactured by OPTIMUS, do not carry a warranty from OPTIMUS and are hereby disclaimed. All Goods manufactured by OPTIMUS' vendors and other third parties and sold as part of OPTIMUS' Work shall carry the warranties given by the applicable vendors and third parties, which warranties OPTIMUS, at its option, will either assign or make available to Customer.

B. When delivered, all Goods shall be in compliance with the United States Environmental Protection Agency (the "EPA"), as defined by its then-current guidelines, and all other applicable law. Customer hereby acknowledges and agrees that such EPA guidelines may require OPTIMUS to affix an EPA supplemental emission control information label (the "EPA Label") to the engine block of Customer's vehicles. Customer further agrees that it shall be responsible to ensure that any and all required EPA Labels remain affixed to such vehicles and, in the event that such EPA Labels are no longer so affixed, to immediately notify OPTIMUS, in which case OPTIMUS shall replace such EPA Labels within seven (7) business days of its receipt of such notification by Customer.

C. Should the Goods, within the applicable Vector System Warranty Period, fail to materially conform to the scope of Work and specifications, if any, set forth in the accompanying **Proposal**, or the Completion Criteria, Customer shall at its cost return the Goods to OPTIMUS, or to a facility or location designated by OPTIMUS, for repair or replacement, and bear the risk of loss while the Goods are in transit. In the event of a valid warranty claim, OPTIMUS shall reimburse Customer for reasonable shipping costs incurred to return the Goods for repair or replacement. OPTIMUS shall pay the shipping charges to return the Goods to Customer and bear the risk of loss during transit, unless such non-conformity was not covered by the Vector System Warranty. In such an event, OPTIMUS shall immediately notify Customer and request instructions regarding disposition. Customer agrees that its sole and exclusive remedy for a breach of the Vector System Warranty is limited to the correction of the non-conformity by repair or replacement and/or reperformance of the Services.

D. The Vector System Warranty shall NOT apply to: (i) Goods which have defects resulting from improper or inadequate maintenance or installation, unauthorized modification or misuse, or operation(s) outside of the environmental specifications by anyone other than OPTIMUS; and (ii) Goods that have been subject to mishandling, misuse, neglect, improper testing, repair, alteration, damage, assembly or processing by anyone other than OPTIMUS, that alters physical or electrical properties. Further, Customer hereby acknowledges and agrees that the Vector System Warranty shall be invalidated if: (a) Customer uses any fuel in connection with the Goods other than that which meets OPTIMUS' required specifications set forth **below**; (b) any of the Goods are not installed by OPTIMUS-trained and certified technicians; or (c) Customer has not purchased and maintained, during the Vector System Warranty Period, the Annual Technology Subscription for each vehicle.

OPTIMUS' MAXIMUM LIABILITY TO CUSTOMER FOR ANY VECTOR SYSTEM WARRANTY CLAIM SHALL NOT EXCEED, PER EACH INSTALLATION OF AN OPTIMUS VECTOR SYSTEM IN A CUSTOMER ORIGINAL VEHICLE, FOR GOODS, THE AGGREGATE AMOUNT OF: (i) \$10,000 US DOLLARS (USD) DURING THE FIRST YEAR OF THE VECTOR SYSTEM WARRANTY PERIOD, AND (ii) \$5,000 US DOLLARS (USD) DURING THE SECOND YEAR OF THE VECTOR SYSTEM WARRANTY PERIOD. CLAIMS FOR WARRANTY OTHER THAN THE VECTOR SYSTEM WARRANTY ARE SUBJECT TO THE LIMITATION OF LIABILITY SET FORTH IN **SECTION 5** OF THE AGREEMENT.

II. Covered Parts Warranty

A. For a period of the sooner to occur of (a) five (5) years or (b) the expiration of the applicable original equipment warranty offered by the manufacturer on the Covered Parts (as defined in **Section II(B)** below), not to include third-party extended warranties, but in no event less than one (1) year, from receipt by OPTIMUS of the signed Notice of Completion and Acceptance of Installation Services accepting the Work (herein, the "Covered Parts Warranty Period"), OPTIMUS hereby warrants damage caused by the Goods to the Covered Parts installed in the Customer's Original Vehicle(s), subject always to the limitations set forth herein (the "Covered Parts Warranty").

B. The Covered Parts Warranty includes only the following components: The Original Vehicle's Engine, Fuel System and Exhaust Components (collectively, the "Covered Parts").

C. Should a Covered Part require repair or replacement during the Covered Parts Warranty Period, the Customer shall promptly notify OPTIMUS of such Covered Parts Warranty claim. If requested by OPTIMUS, Customer shall promptly provide to OPTIMUS all reasonable information necessary to evaluate the claim including, without limitation, access to any Customer or third-party representative who may have evaluated and inspected the Covered Parts, documentation of any prior repairs or modifications to the Covered Parts and physical access to the Covered Parts for independent evaluation and inspection. If the damaged parts are covered by the Covered Parts Warranty, Optimus shall repair or replace the affected Covered Parts, or shall cause the affected Covered Parts to be repaired or replaced, all at its sole cost and expense (subject always to the limitations set forth in the Terms and Conditions Agreement). Customer agrees that its sole and exclusive remedy for a Customer's Covered Parts Warranty claim is the remedy of the Covered Parts by repair or replacement in OPTIMUS' sole reasonable discretion. If the damaged parts are not covered by the Covered Parts Warranty, OPTIMUS has the right to deny the Customer's Covered Parts Warranty claim. If Customer has a right to recover its damages against an unrelated third party for any cost that OPTIMUS has paid to evaluate the claim, Customer, if requested by OPTIMUS, shall assign such rights to OPTIMUS. Customer agrees to provide reasonable assistance OPTIMUS to enforce Customer's rights against any such third party who may be responsible to Customer for the costs of repairs OPTIMUS provided.

D. OPTIMUS' MAXIMUM LIABILITY TO CUSTOMER FOR ANY WARRANTY CLAIM UNDER THE COVERED PARTS WARRANTY SHALL NOT EXCEED, PER EACH INSTALLATION OF AN OPTIMUS VECTOR SYSTEM IN A CUSTOMER ORIGINAL VEHICLE, THE AGGREGATE AMOUNT OF \$50,000 US DOLLARS (USD).

III. Warranty Invalidated; Customer Requirements

A. The Vector System Warranty and the Covered Parts Warranty shall be invalidated and of no force and effect immediately in the event that (i) Customer has not completed the "Notice of Completion and Acceptance of Installation Services" form for each Original Vehicle within seven (7) days of its receipt and acceptance of the Work from OPTIMUS; (ii) Customer uses any fuel in connection with the Goods other than that which meets OPTIMUS' required specifications set forth below; (iii) Customer has an expired Annual Technology Subscription license, as defined in the Terms and Conditions Agreement; (iv) Original Vehicle(s) aftertreatment assemblies are not maintained to the specifications originally set forth by the manufacturer or the manufacturer of the Original Vehicles (the "OEMs"); (v) Original Vehicle(s) engine oil, oil filter, and/or fuel filters are not replaced upon the later to occur of (a) the OEM recommended service interval; or (b) a Customer-specific OEM-approved service interval; (vi) Customer does not send oil analyses for each of its vehicles to OPTIMUS within thirty (30) days after every oil change; (vii) the Goods or the Covered Parts are modified or maintained by Customer or a third party in a manner that is inconsistent with Optimus's or the OEMs' service and operating manuals; (viii) Customer installs or uses component parts not authorized or approved by Optimus or the OEMs; (ix) the Goods or the Covered Parts are damaged or destroyed in a vehicle accident or wreck; (x) in relation to the Covered Parts Warranty, the manufacturer's warranty on the applicable Original Vehicle is expired after one (1) year from the date of receipt by OPTIMUS of the signed Notice of Completion and Acceptance of Installation Services accepting the Work; and/or (xi) the Customer's unauthorized modification, misuse, mishandling, neglect, improper or inadequate maintenance or operation of the Goods or Covered Parts.

IV. Limitation of Liability; Disclaimer

A. OTHER THAN THE WARRANTIES SPECIFICALLY SET FORTH IN THIS **OPTIMUS STATEMENT OF WARRANTY**, OPTIMUS MAKES NO OTHER WARRANTIES, AND HEREBY DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, REGARDING, OR RELATING TO, THE WORK. EXCEPT AS SET FORTH IN **SECTION 12** OF THE TERMS AND CONDITIONS AGREEMENT, ANY AND ALL WARRANTIES SET FORTH WITHIN THIS AGREEMENT EXTEND TO CUSTOMER ONLY AND NOT TO ANY THIRD PARTIES.

B. CLAIMS FOR WARRANTY OTHER THAN THE VECTOR SYSTEM WARRANTY AND THE COVERED PARTS WARRANTY ARE SUBJECT TO THE LIMITATION OF LIABILITY SET FORTH IN **SECTION 5** OF THE TERMS AND CONDITIONS AGREEMENT.