



**STANDARD  
TERMS AND CONDITIONS OF SALE**



## **STANDARD TERMS AND CONDITIONS OF SALE**

**THESE STANDARD TERMS AND CONDITIONS OF SALE** (these “**Terms**”) are attached to and incorporated by reference into the purchase order, order form, or other purchase and sale documentation (as applicable, the “**Order**”) by which O’Neil Digital Solutions, LLC (“**O’Neil**”), 12655 Beatrice St., Los Angeles, California 90066, agrees to and does sell to the party identified on the Order (the “**Client**”), the products and services (collectively, the “**Services**”), set out on the Order. O’Neil and Client are at times referred to herein individually as a “**Party**” or collectively as the “**Parties**.”

**1. EXPIRATION & SURVIVAL:** Neither Party may terminate these Terms or the Order before it expires, except due to material breach by the other Party. Terms related to confidentiality, indemnification, limitation of liability, intellectual property rights, and any other provisions which by their nature would survive will not expire or be affected in any way by the ending of these Terms or an Order for any reason and will survive and remain fully enforceable.

**2. SERVICES:** O’Neil will provide Services for Client in a prompt, efficient, and professional manner. Time will not be of the essence for any Services, and O’Neil will have sole authority to determine where the Services will be performed.

**3. PAYMENT, PRICING, & INVOICES:** O’Neil will invoice Client based on the Order and the Services performed; each invoice will detail any fees/costs/expenses due by Client for the Services. Any sales tax applicable to O’Neil’s charges to Client will be included as a separate line item on O’Neil’s invoices. O’Neil may send Client invoices in an electronic format. All payments will be made by check, wire transfer, or another mutually agreed payment method. All undisputed amounts will be paid by Client within thirty (30) days following its receipt of invoice.

### **4. INTELLECTUAL PROPERTY OWNERSHIP & LICENSES**

**(a) CLIENT MATERIALS:** Client will exclusively own and retain all right, title, and interest in: (a) any materials supplied by Client to O’Neil, including, without limitation, Client content submitted for production of document outputs (“**Deliverables**”) and/or storage on O’Neil’s systems; and (b) any final document outputs produced by O’Neil. Client materials will not contain any matter that is libelous, slanderous, defamatory, scandalous, or invades any person’s rights to privacy. Client grants O’Neil a non-exclusive, royalty-free, worldwide license to copy, use, and distribute the Client materials and make derivative works as required in connection with O’Neil’s performance of the Services.

**(b) O’NEIL MATERIALS:** O’Neil will exclusively own and retain all right, title, and interest in any materials used by O’Neil to perform the Services (excluding any Client Materials), including, without limitation, O’Neil’s know-how, equipment, technology, processes, source code, and software. If O’Neil includes or provides Client with any O’Neil materials as part of the Services, O’Neil hereby grants Client a non-exclusive, worldwide license to use the O’Neil materials provided by O’Neil solely as required for Client’s receipt and use of the Services under these Terms. Client will have no right to market, sell, or otherwise disclose any O’Neil materials to any third party and/or reverse-engineer, disassemble, or decompile any such materials, or attempt to do the same.

**5. LIMITED WARRANTIES:** EXCEPT TO THE EXTENT PROHIBITED OR REQUIRED BY LAW, ANY WARRANTIES EXPRESSLY INCLUDED HEREIN ARE THE SOLE WARRANTIES OF THE PARTIES. ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW.

### **6. COMPLIANCE:**

**(a) Generally:** Each Party will conduct its business operations in an ethical manner, consistent with applicable laws, regulations, and governmental orders (collectively, “**Applicable Laws**”), and cause its employees, agents, and contractors to comply with the same. Any breach of this Section by a Party or any of its employees, agents, or contractors that remains uncured for thirty (30) days from the time of the breach, will entitle the non-breaching Party to terminate these Terms upon written notice to the other Party.

**(b) DATA PRIVACY & SECURITY:** Each Party will establish and maintain appropriate administrative, physical, and/or technical security methods and safeguards to protect Personal Information (as defined below) from unauthorized uses and/or disclosures consistent with Applicable Laws. “**Personal Information**” means any information that: (i) can be used to identify an individual, directly or indirectly, with particularity; and (ii) is required to be protected by Applicable Laws. Notwithstanding the preceding, Client will not disclose Personal Information to O’Neil for testing purposes. If Client does disclose Personal Information to O’Neil for such purposes, Client will indemnify O’Neil from any third-party claims arising from such disclosure, and O’Neil may charge Client for handling such Personal Information. The definition of “Applicable Laws” includes, as applicable, the following:

**i. Healthcare Privacy Laws:** The Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191) and its implementing regulations, specifically including the Privacy Rule (45 C.F.R. §§ 160 and 164, Subparts A and E) and the Security Rule (45 C.F.R. §§ 160 and 164, Subparts A and C)(collectively, “**HIPAA**”); and the Health Information Technology for Economic and Clinical Health Act of 2009 (Public Law 111-5). Because the Services may require O’Neil to access, use, and/or otherwise process “**Protected Health Information**” on Client’s behalf as a “**Business Associate**” (both as defined under HIPAA), the Parties are concurrently entering into a Business Associate Agreement (a “**BAA**”), which is not attached these Terms, but which incorporated herein by reference. If any terms in these Terms, any SOW, and/or any other supplement conflict with those in the BAA, the BAA will control.

**ii. Financial Privacy Laws:** The Gramm-Leach-Bliley Act (Public Law 106-102); Regulation S-P (17 C.F.R. § 248.30); the Fair Credit Reporting Act (15 U.S.C. § 1681); the Fair and Accurate Credit Transaction Act (Pub. L. 108-159); the Massachusetts Standards for the Protection of Personal Information of Residents of the Commonwealth (201 Mass. Code Regs. 17.01 - 17.05); the Minnesota Plastic Card Security Act (Minn. Stat. Ann. § 325E.64); the Nevada Encryption Requirements (Nev. Rev. Stat. Ann. § 603A); and the New York State Cybersecurity Rules (23 N.Y.C.R.R. Part 500, et seq.).

**(c) CONTENT, DATA, & OPT-OUTS:** Client will be solely responsible for: (i) all content and/or data contained in the Client Materials, including but not limited to, any informational or marketing content; (ii) ensuring it has the right to provide any content and/or data that it or any of its agents or contractors provides to O'Neil; (iii) including any "opt-out" language required by Applicable Laws in Client materials (e.g., CAN-SPAM Act notices); and (iv) providing and maintaining any opt-out mechanism required by Applicable Laws.

**(d) AUTHORIZATIONS:** Client will obtain all required consents, opt-ins, approvals, releases, and authorizations from individuals or entities that are required by Applicable Laws and are necessary for O'Neil to perform the Services. Client will promptly notify O'Neil in writing of any restriction or limitation that may affect O'Neil's use or disclosure of information provided by Client, including any opt-out or withdrawal of any required authorization. Client will only use the Services to send communications to persons or entities that have provided proper authorizations to receive such communications in the manner required and defined by Applicable Laws. If O'Neil's Services include dialing telephone numbers and/or sending text messages through its platform, such platform may be considered an "autodialer" as defined under the Telephone Consumer Protection Act and its implementing regulations (15 U.S.C. §§ 6101-6108). Client will obtain all required authorizations from individuals whom O'Neil may contact employing autodialers.

**(e) PRIVACY NOTICES:** Client will: (i) maintain adequate privacy notices that detail how it handles, processes, and shares Personal Information as required by Applicable Laws; (ii) assure that such notices cover the Services contemplated by these Terms; and (iii) assure that such notices have been provided to individuals that are the subject of any Personal Information to be provided to O'Neil.

## **7. CONFIDENTIALITY**

**(a) OBLIGATIONS:** In the performance of these Terms, a Party (the "**Recipient**") may learn Confidential Information (as defined below) of the other Party (the "**Discloser**"). Recipient will take all reasonable precautions to prevent unauthorized disclosures of such information or materials to third parties and will only use such information for the purpose of performing its obligations and exercising its rights expressly granted hereunder. Recipient may disclose Confidential Information to its employees, affiliated entities, agents, and/or contractors on a need-to-know basis, provided such persons are made aware of the confidential nature of the information and are under a materially similar written obligation of confidentiality. All Confidential Information and all copies thereof (including notes and memoranda incorporating any Confidential Information) will remain the property of the Discloser and upon Discloser's request such information, at Discloser's option, will either be returned to Discloser or destroyed by Recipient, with Recipient providing Discloser with written certification of such destruction. The Parties' obligations under this Section survive for three (3) years following the end of these Terms, except that the obligations of confidentiality and nonuse related to any trade secret disclosed to, or observed by, Recipient continue until such trade secret is generally known or available to the public through no fault, action, or inaction on the part of the Recipient.

**(b) DEFINITION: "Confidential Information"** means information or materials in any format that a reasonable person would consider to be confidential in nature. For the avoidance of doubt, the definition of Confidential Information includes the contents of these Terms, the Order and any information, materials, items, or equipment disclosed or observed through visits to, or inspections of, O'Neil facilities. The definition of "Confidential Information" does not include any information that: (i) is generally known by or available to the public through no fault of the Recipient; (ii) was already in the Recipient's possession legally, without restriction; (iii) is furnished to the Recipient by a third party who legally obtained the information and had the right to disclose it; (iv) is developed independently by the Recipient without reference to Confidential Information as evidenced through its written business records; (v) is released from its confidential status by written agreement between the Parties; or (vi) is required to be disclosed pursuant to law, regulation, or a valid court order, provided Recipient gives Discloser prompt written notice thereof (to the extent allowed by law, regulation, or court order) and takes reasonable steps to assist Discloser in seeking a protective order or in taking other similar lawful action to limit the extent of such disclosure.

## **8. INDEMNIFICATION**

**(a) GENERALLY:** Each Party (the "**Indemnifying Party**") will indemnify and defend the other Party and any of its affiliated entities, and any of their respective shareholders, directors, members, officers, employees, and/or agents (each an "**Indemnified Party**"), from and against any and all third party claims, demands, actions, suits, causes of action, damages, losses, and/or liabilities (each a "**Claim**"), including related costs, fines, penalties, expenses, and reasonable attorneys' fees that are incurred in connection therewith, to which the Indemnified Party becomes subject as a result of the Indemnifying Party's material breach of these Terms.

**(b) EXCEPTIONS:** The Indemnifying Party's obligations as set out herein do not apply to the extent a Claim is caused by the negligent acts, omissions, or willful misconduct of the Indemnified Party or its employees, agents, and/or contractors. O'Neil's indemnity obligations do not apply to the extent a Claim for infringement or misappropriation of intellectual property rights ("**IP Rights**") arises as a result of: (i) O'Neil's use of any Client materials in accordance with these Terms; (ii) O'Neil's reliance on any Client specifications or instructions; (iii) Client's continued use of an outdated version of a Service or Deliverable after being notified by O'Neil that use of a newer version could avoid a Claim; (iv) Client's continued use of a Service or Deliverable after O'Neil notifies Client to discontinue use of such Service or Deliverable due to a Claim for infringement or misappropriation of IP Rights; (v) any modification or alteration of a Service or Deliverable by a person or entity other than O'Neil; (vi) Client's use of a Service or Deliverable in a manner or for a purpose for which it was not designed or that is beyond its intended use; (vii) the Indemnified Party ceases all use or other exploitation of any materials subject to any intellectual property infringement or misappropriation Claim; or (viii) the combination of a Service or Deliverable with materials not provided by O'Neil.

**9. LIMITATION OF LIABILITY:** NEITHER PARTY WILL BE LIABLE TO ANY PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL, LOST PROFITS AND REVENUE, ANTICIPATED SAVINGS, OPPORTUNITY COSTS, DAMAGE TO REPUTATION OR GOODWILL, LOSS OF USE, LOSS OF INFORMATION OF ANY KIND, OR ANY OTHER SIMILAR TYPES OF DAMAGES OR LOSSES OF, HOWEVER CAUSED AND REGARDLESS OF WHETHER SUCH LIABILITY ARISES FROM A BREACH OF CONTRACT, TORT, OR ANY OTHER THEORY OF LIABILITY, ARISING IN CONNECTION WITH THE PERFORMANCE OF, OR FAILURE TO PERFORM UNDER, THESE TERMS OR IN CONNECTION WITH THE USE OF, OR INABILITY TO USE THE SERVICES, REGARDLESS OF WHETHER THE PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH HARM.

NEITHER PARTY'S TOTAL LIABILITY FOR ANY DAMAGES IN ANY ACTION, WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER THEORY OF LIABILITY, ARISING OUT OF, OR IN CONNECTION WITH, THESE TERMS OR THE ORDER, OR ARISING OUT OF THE SERVICES OR DELIVERABLES PROVIDED PURSUANT TO THESE TERMS, WILL EXCEED THE TOTAL PRICE FOR THE SERVICES SET OUT IN THE ORDER. THE PARTIES EXPRESSLY ACKNOWLEDGE THAT THE PRECEDING LIMITATIONS ON LIABILITY ARE A

FAIR COMPROMISE AND WAIVE ANY RIGHT TO LATER CHALLENGE THEM AS UNREASONABLE, UNCONSCIONABLE, OR OTHERWISE.

**10. PUBLICITY:** Neither Party will use the name, logo, or other IP Rights of the other Party in any advertising or promotional materials without the written consent of the other Party. O'Neil may, however, reference Client as a customer and use Client's name and logo in non-public sales presentations.

## **11. MISCELLANEOUS**

**(a) RELATIONSHIP:** The relationship of the Parties is that of independent contractors and not co-venturers, agents, employees, or representatives of the other. No act, action, or omission to act of one Party will in any way be binding upon or obligate the other.

**(b) SEVERABILITY:** If any provision of these Terms is held invalid, illegal, or unenforceable by a court or regulatory authority of competent jurisdiction, the rest of these Terms (including, without limitation, any enforceable part of a partially unenforceable provision) will remain valid and enforceable to the fullest extent permitted under applicable law or regulation.

**(c) MODIFICATION:** Provisions of these Terms and any supplement hereto may only be modified or amended only in a writing executed by an authorized signatory of each Party.

**(d) ENTIRE AGREEMENT:** These Terms and Order constitute the entire agreement between the Parties and supersede all contemporaneous or prior agreements and understandings, both written and oral, with respect to the subject matter hereof. These Terms and the Order will control over any terms or conditions contained in any other documentation (including but not limited to other purchase orders, shipping order forms, bills of lading, or receipts or the like) and expressly exclude any general terms and conditions contained in any Client documentation. If these Terms conflict with the Order, these Terms will control unless the Order expressly provides otherwise.