

## MASTER PRODUCTS AND SERVICES AGREEMENT

These General Terms and Conditions together with all Supplements, Order Form(s), Exhibits and other addenda attached hereto from time to time constitute the **Master Products and Services Agreement** (“Agreement”) which is effective as of the last date of execution on the AirCell Order Form (“Effective Date”) by and between **AirCell, Inc.** (“AirCell”), an Illinois corporation, and Customer. AirCell and Customer are collectively referred to as the “Parties” or individually as a “Party”.

### 1. DEFINITIONS

“AirCell’s Network” means, collectively, the fixed wireless broadband networks, system capacity and related facilities (including, without limitation, routers, switches and communication channels) owned or controlled by AirCell to the extent it applies to the Product or Service;

“Applicable Taxes” shall have the meaning ascribed to it in Section 4.1, below;

“Commencement Date” means the date upon which AirCell begins to provide an ordered Product or Service as more fully described in the relevant Supplement or Order Form;

“Customer Location” is an address wherein AirCell will handoff Service to Customer;

“Monthly Charge” or “MRC” shall have the meaning ascribed to in Section 3.2, below.

“Non-Recurring Charge” or “NRC” shall have the meaning ascribed to it in Section 3.1, below;

“Order Form” refers to any, mutually executed, order form, service order, schedule or statement of work detailing, among other things, the Products or Services ordered by Customer and Customer’s financial obligation with respect to such Products or Services;

“Order Form Effective Date” is the last date that an Order Form is mutually executed by a Party;

“Prepayment” shall have the meaning ascribed to it in Section 3.3, below;

“Product or Service” means any product (“Product”) or service (“Service”) provided by AirCell to Customer as described or specified in a Supplement and Order Form;

“Supplement” means a fully executed supplement to these General Terms and Conditions each containing additional terms and conditions that govern the related Products or Services provided by AirCell;

“Term” means the period of time in which AirCell provides Products or Services to Customer pursuant to an Order Form and any renewals thereto.

### 2. STRUCTURE OF AGREEMENT

From time to time, the Parties will execute one or more Supplement(s) and Order Forms for AirCell to provide Products or Services, each of which is automatically incorporated into this Agreement and subject to these General Terms and Conditions.

### 3. INVOICING AND PAYMENT

3.1. **Non-Recurring Charge.** If a non-recurring charge (“NRC”) is specified in an Order Form, AirCell will invoice such NRC upon the Order Form Effective Date. Customer will pay the NRC within thirty (30) days of invoice. If an Order Form

replaces a prior Order Form(s), the NRC, specified therein, is in addition to any NRC(s) specified in such prior Order Form(s).

3.2. **Monthly Charge.** Beginning on the Commencement Date of each Product or Service, AirCell will invoice Customer the monthly charge (“MRC”) specified in the Order Form and Customer will pay the MRC in advance for each month of the Term. If the Parties agree that Customer will prepay the MRCs, upfront, AirCell will invoice the prepaid MRC in the manner set forth in the Order Form. Customer will pay a MRC within thirty (30) days of invoice. A MRC for a partial month will be pro-rated.

3.3. **Prepayment.** If a prepayment amount (“Prepayment”) is specified in an Order Form, such Prepayment will be invoiced upon the Order Form Effective Date. Customer will pay the Prepayment within thirty (30) days of invoice. A Prepayment represents the last month(s) payment and will be credited to Customer at the end of the Term of the related Product or Service.

3.4. **Other Charges.** If applicable, AirCell will invoice Customer and Customer will pay invoices for any other charges as set forth in this Agreement within thirty (30) days of such invoice.

3.6. **Late Payments.** All invoices must be paid in accordance with their terms without setoff or deduction, and late payments will be assessed a late fee of \$5.00. A complete list of fees can be found on the [Additional Fees and Payment Terms Disclosure Statement](#).

3.7. **Currency.** Payment will be made in the currency specified in the Order Form.

#### **4. APPLICABLE TAXES**

4.1. **Applicable Taxes.** In addition to the charges set forth in an Order Form, Customer shall be responsible for paying all Applicable Taxes in accordance with the applicable invoice. “Applicable Taxes” mean all taxes, levies, fees, imposts, duties, charges, surcharges, assessments or withholdings of any kind or nature levied or imposed upon AirCell or Customer, arising from or relating to the provision by AirCell of the Services to Customer (including, without limitation, sales, excise taxes, universal service fees, any other FCC or state PUC fees, and any state or local utility or telecommunications taxes), together with any penalties, fines or interest (resulting from Customer's failure to pay Applicable Taxes hereunder after being invoiced for such) by any U.S. federal, state, provincial or local government, public authority, including its agencies, commissions and tribunals, or their designated agents, having jurisdiction over this transaction. Customer shall not be responsible for and Applicable Taxes shall not include taxes on the property or income of AirCell.

4.2. Notwithstanding the foregoing, Customer may provide AirCell with a certificate evidencing Customer’s exemption from payment of or liability for any Applicable Taxes and such certificate will be honored from the date that AirCell receives same from Customer.

#### **5. TERM**

5.1. This Agreement commences on the Effective Date, and continues through the latest expiration of all Services set forth in Order Form(s) subject to this Agreement, unless earlier terminated as provided herein.

5.2. The Term for each Product or Service begins on the related Commencement Date and remains in effect until the expiration of the initial period so specified. Upon expiration of the period specified in an Order Form (and any expiration of renewal Terms), and provided that the Monthly Charge is not fully prepaid, each Product or Service will automatically renew for additional periods of one (1) month unless one Party provides the other notice that it is terminating such Product or Service not less than ten (10) days’ prior to the end of the Term then in effect.

#### **6. DEFAULT**

The following events are events of default, the occurrence of which gives the non-defaulting Party the right to terminate the affected Order Form(s), or the entire Agreement for a nonpayment default, by written notice following the expiration of any stated cure periods and pursue its remedies under the Agreement:

- a) Customer fails to fully pay any of the payments required hereunder within five (5) days after receipt of written notice of such failure; or
- b) Except as provided in clause (a), above, the breach of any material term or condition of this Agreement (including Order Forms) and such breach remains uncured thirty (30) days after delivery to the breaching Party of written notice of such breach. If the breach is of a nature or involves circumstances reasonably requiring more than thirty (30) days to cure, the time period shall be extended provided the breaching Party proceeds diligently to cure the breach;

If Customer is in default, as set forth above, then, after expiration of the cure period, AirCell may, in addition to any other remedies that it may have under this Agreement or by law, suspend, disconnect and/or repossess any Products or Services, provided, however, that Customer will remain responsible to perform its obligations hereunder.

## **7. REPRESENTATIONS AND WARRANTIES**

7.1. AirCell warrants that any Products and Services to be provided to Customer will be at a professional level of quality conforming to generally accepted industry standards and in compliance in all material respects with all applicable laws and regulations. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, AIRCELL DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED INCLUDING ANY AND ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

7.2. Each Party represents and warrants to the other that (i) it is duly organized, validly existing and in good standing under the laws of the state of its organization, (ii) it has all requisite power and authority to enter into and perform its obligations under this Agreement and all Order Forms, (iii) it will comply with all applicable federal, state and local laws, statutes, rules and regulations in connection with the provision and use of the Products and Services and (iv) this Agreement and all Order Forms, when executed, are the legal, valid and binding obligation of such Party.

7.3 Customer acknowledges that AirCell has no ability to determine whether the communications traffic carried by the Products or Services utilizing the AirCell Network is jurisdictionally interstate or intrastate. Customer represents and warrants that the communications traffic to be carried by the AirCell Network shall be jurisdictionally interstate, pursuant to the Federal Communications Commission's mixed-use "10% Rule"(47 CFR 36.154, 4 FCC Rcd. 1352), unless Customer provides AirCell written notice otherwise. In either case, Customer will pay all relevant FCC and state Public Utilities Commission taxes and fees.

## **8. LIMITATION OF LIABILITY; INDEMNIFICATION**

8.1. THE TOTAL LIABILITY OF EITHER PARTY FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH AN ORDER FORM (EXCLUDING AMOUNTS PAID OR PAYABLE PURSUANT TO SECTIONS 3 AND 4, ABOVE) IS LIMITED TO AN AMOUNT EQUAL TO THE TOTAL CHARGES PAYABLE BY CUSTOMER DURING THE TERM SET FORTH THEREIN. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES (WHETHER ARISING OUT OF TRANSMISSION INTERRUPTIONS OR PROBLEMS, ANY INTERRUPTION OR DEGRADATION OF SERVICE OR OTHERWISE), WHETHER FORESEEABLE OR NOT, EVEN IF A PARTY HAS BEEN ADVISED BY THE OTHER PARTY OF THE POSSIBILITY OF THE DAMAGE AND EVEN IF A PARTY ASSERTS OR ESTABLISHES A FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED IN THIS AGREEMENT. THE LIMITATIONS SET FORTH IN THIS SECTION WILL APPLY TO CLAIMS OF BREACH OF CONTRACT, BREACH OF WARRANTY,

NEGLIGENCE, OR STRICT LIABILITY. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY LOSS OF DATA.

8.2. AirCell agrees to indemnify, defend and hold Customer, its officers, directors, employees, agents and contractors harmless from and against all loss, damage, liability, cost and expense (including reasonable attorneys' fees and expenses) by reason of any claims or actions by third parties against Customer for (i) bodily injury or death, and damage, loss or destruction of any real or tangible personal property, which third party claims arise out of or relate to AirCell's gross negligence or willful misconduct or (ii) infringement or misappropriation by AirCell of any intellectual property rights under this Agreement.

8.3. Customer agrees to indemnify, defend and hold AirCell, its officers, directors, employees, agents and contractors harmless from and against all loss, damage, liability, cost and expense (including reasonable attorneys' fees and expenses) by reason of any claims or actions by third parties against AirCell for (i) bodily injury or death or damage, loss or destruction of any real or tangible personal property, which third party claims arise out of or relate to Customer's gross negligence or willful misconduct, (ii) infringement or misappropriation by Customer of any intellectual property rights under this Agreement, or (iii) Customer's or its customer's use of the Products or Services, including without limitation, defamation, libel, slander, obscenity, pornography, or violation of the rights of privacy or publicity, or spamming or any other tortious or illegal conduct.

## **9. INTERRUPTION OF SERVICE**

In the event of signal failure or other disruption in the Connectivity Service under the control of AirCell, AirCell will, proceed immediately and with due diligence to repair the Connectivity Service disruption as quickly as is reasonably practicable following receipt of telephonic notice to AirCell. Provided that AirCell can repair any damage or provide an alternate service within 24 hours, AirCell will have no responsibility or liability to User for any such disruption in the Connectivity Service(s). In the event any disruption of the Connectivity Service extends beyond 24 hours, AirCell shall pay User an outage credit for each half-hour period of the outage, which outage credit shall be equal to 1/1440<sup>th</sup> of the monthly periodic charge actually paid by User for the Connectivity Service. In the event that any disruption of Service will extend beyond 72 hours, or in the event that more than three such disruptions of more than four hours each occur within any calendar year during the term hereof, User may terminate the Service Order associated with the failed service without further liability. Customer shall bear the full cost of repairing or replacing any AirCell equipment which suffers any loss, theft or destruction that is caused by User or its employees, appointees, invitees, or independent contractors, or which is otherwise attributable to willful or negligent conduct by such persons or entities.

## **10. CONFIDENTIALITY; PUBLICITY**

10.1. **Confidentiality.** Each Party agrees that the terms of this Agreement and all information furnished to it by the other Party, including maps, pricing, financial terms, network routes, design information, methodologies, specifications, locations or other information to which it has access under this Agreement, are deemed the confidential and proprietary information or trade secrets (collectively referred to as "Proprietary Information") of the Disclosing Party and will remain the sole and exclusive property of the Disclosing Party (the Party furnishing the Proprietary Information referred to as the "Disclosing Party" and the other Party referred to as the "Receiving Party"). Each Party will treat the Proprietary Information and the contents of this Agreement in a confidential manner and, except to the extent necessary in connection with the performance of its obligations under this Agreement, neither Party may directly or indirectly disclose the same to anyone other than its employees on a need to know basis and who agree to be bound by the terms of this Section, without the written consent of the Disclosing Party. Information will not be deemed Proprietary Information if it (i) becomes publicly available other than through the actions of the Receiving Party; (ii) is independently developed by the Receiving Party; or (iii) becomes available to the Receiving Party without restriction from a third party. If the Receiving Party is required by a governmental or judicial law, order, rule, regulation or permit to disclose Proprietary Information, it must give prompt written notice to the Disclosing

Party of the requirements of such disclosure and cooperate fully with the Disclosing Party to minimize such disclosure, and disclosure after such notice shall not be a breach hereof.

10.2. **Publicity.** Neither Party may issue any advertising or other publicity material using the other Party's name or marks or describing in any way the terms of this Agreement without first receiving the other Party's written consent as to form and content, which consent may not be unreasonably withheld, conditioned, or delayed.

## 11. ASSIGNMENT

Neither Party will assign or transfer this Agreement without the other Party's prior written consent, except that either Party may assign this Agreement upon notice and without the other Party's consent to a person, firm, corporation, partnership, association, trust or other entity (i) that controls, is controlled by or is under common control with the assigning Party or (ii) which purchases all or substantially all of its assets or stock; provided that the assignee assumes all liabilities hereunder in writing prior to the effectiveness of such assignment. Any assignment or transfer without the required consent is void and is considered a material breach of this Agreement. Upon any permitted assignment, the assigning Party will remain jointly and severally responsible for the performance under this Agreement, unless released in writing by the other Party, and this Agreement will be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

## 12. FORCE MAJEURE

Neither party will be considered in breach of this Agreement nor liable under this Agreement for any delays, failures to perform, damages or losses, or any consequence thereof, caused by or attributable to an event of "Force Majeure," which is defined as any cause beyond the reasonable control of the party claiming relief, including without limitation the action by a governmental authority (such as a moratorium on any activities related to this Agreement or changes in government codes, ordinances, laws, rules, regulations, or restrictions occurring after the Effective Date), third-party labor dispute, flood, earthquake, fire, lightning, epidemic, war, act of terrorism, riot, civil disturbance, act of God, sabotage, fiber cut caused by a third-party or failure of a third party to recognize a permit, authorization, right-of-way, easement, right, license or other agreement obtained by AirCell to construct and operate its facilities or network.

## 13. NOTICES

All notices, including but not limited to, demands, requests and other communications required or permitted hereunder (not including invoices) must be in writing and will be deemed given: (i) when delivered in person, (ii) one (1) business day after deposit with an overnight delivery service for next day delivery, or (iii) three (3) business days after deposit in the United States mail, postage prepaid, registered or certified mail, return receipt requested, and addressed to the recipient Party at the address set forth on first page hereof. In addition, AirCell may send Customer notices, other than notices for default or termination, to Customer's email address as contained on AirCell's customer contact list. Such email notification is deemed delivered on the day sent unless returned to sender.

## 14. MISCELLANEOUS

14.1 **Governing Law.** This Agreement will be interpreted and construed in accordance with the internal laws of the State of Illinois without giving effect to its principles of conflicts of laws. This Agreement and the duties and obligations of the Parties hereunder shall be enforceable against any of the Parties in the courts of Illinois.

14.2 **Survival.** The Parties' respective representations, warranties, and covenants, together with obligations of indemnification, confidentiality and limitations on liability will survive the expiration, termination or rescission of this Agreement and continue in full force and effect.

14.3 **No Third-Party Beneficiaries.** The covenants, undertakings, and agreements set forth in this Agreement are solely for the benefit of and enforceable by the Parties or their respective successors or permitted assigns.

14.4 **Relationship of the Parties.** The relationship between the Parties hereunder is not that of partners or agents for one another and nothing contained in this Agreement may be deemed to constitute a partnership, joint venture or agency agreement between them.

14.5 **Remedies Not Exclusive.** Except as otherwise expressly provided, the rights and remedies set forth in this Agreement are in addition to, and cumulative of, all other rights and remedies at law or in equity.

14.6 **Headings; Severability.** The headings in this Agreement are strictly for convenience and do not amplify or limit any of the terms, provisions or conditions hereof. In the event any term of this Agreement is held invalid, illegal or unenforceable, in whole or in part, neither the validity of the remaining part of such term nor the validity of the remaining terms of this Agreement will be in any way affected.

14.7 **No Implied Waiver.** No failure to exercise and no delay in exercising, on the part of either Party, any right, power or privilege hereunder will operate as a waiver, except as expressly provided herein.

14.8 **Execution and Counterparts.** This Agreement may be executed in counterparts, including by facsimile transmission, each of which when executed and delivered is an original, but all the counterparts together constitute the same document.

14.9 **Order of Precedence.** If any conflict or contradiction exists between these General Terms and Conditions and a Supplement, the terms of a Supplement will control. If any conflict or contradiction exists between a Supplement and the terms of an Order Form, the terms of the Order Form will control. If any conflict or contradiction exists between these General Terms and Conditions and the terms of an Order Form, the terms of the Order Form will control.

## **15. ENTIRE AGREEMENT; AMENDMENT; EXECUTION**

This Agreement, including all Supplements, Order Forms, exhibits and addenda attached hereto is the entire agreement between the Parties with respect to the subject matter hereof and supersedes any and all prior negotiations, understandings and agreements, whether oral or written with respect to such subject matter. This Agreement may be amended only by a written instrument executed by the Parties..

## **16. ACCEPTANCE**

Customer represents and warrants to AirCell that Customer is of lawful age to enter into this Agreement and that:

- (a) Customer has the full right, power and authority to enter into this Agreement and to perform the acts required of Customer hereunder; and
- (b) The acceptance of this Agreement by Customer, and the performance by Customer of its obligations and duties hereunder, do not and will not violate any agreement to which Customer is a party or by which it is otherwise bound.

By using and accepting Service from AirCell, Customer acknowledges that they have read and understand the terms and conditions of this Agreement and agrees to be legally bound by all of the terms and conditions of this Agreement and any associated documents, the same as if Customer had physically signed this Agreement. This Agreement supersedes all other written and oral communications or agreements with regard to the subject matter. Any waiver, modification or variation of any term or condition of this Agreement shall only be effective if posted to this website in writing and/or in the form of a business contract signed by an authorized officer of AirCell

By providing AirCell with Customer's telephone number, cell phone number(s), or email address, Customer gives consent for AirCell, or any of AirCell's agents (including collection agents), to contact Customer at these numbers or email address, or any other phone number or email address that is later acquired for Customer, and, to leave live or pre-recorded messages, text messages, or emails to the extent that such are necessary to enforce any part of this Agreement. For greater efficiency, calls may be delivered by an auto-dialer.

BY CUSTOMER'S USE AND ACCEPTANCE OF THE SERVICE, CUSTOMER IS INDICATING THAT CUSTOMER HAS READ, UNDERSTOOD AND AGREED TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT.

THESE TERMS AND CONDITIONS ARE SUBJECT TO CHANGE WITHOUT NOTICE, FROM TIME TO TIME IN OUR SOLE DISCRETION. WE WILL NOTIFY YOU OF AMENDMENTS TO THESE TERMS AND CONDITIONS BY POSTING THEM TO THIS WEBSITE.