



General Terms and Conditions

1. **Applicability.** These General Terms and Conditions (“General Terms and Conditions”) apply to all Services purchased from **Airband Communications, LLC**, a Delaware limited liability company, from the Customer set forth on Service Orders accepted by Airband and that reference the webpage where this version of the General Terms and Conditions can be viewed.
2. **Services.** Subject to this Agreement, Customer shall purchase, and Airband shall supply, the Services set forth on the Service Order(s) submitted by Customer and accepted by Airband. All Services are subject to availability. Additional terms and conditions applicable to specific types of Services are set forth on documents referred to herein as “Service Supplements”. Service Supplements can be accessed on Airband’s website at www.airband.com/ProductSupplements092109, which Service Supplements are incorporated into the Agreement by this reference.
3. **Term.** Each Service Order shall include a term for each Service, which shall begin on the Service’s Activation Date and continue for the number of months indicated on the Service Order (the “Initial Service Term”). If no Initial Service Term is indicated on the Service Order, the Initial Service Term shall be thirty-six (36) months. Upon expiration of the Initial Service Term, the purchasing by Customer and provisioning by Airband of the Service shall continue automatically for consecutive 12-month periods (each a “Renewal Term”) unless: (i) earlier terminated pursuant to this Agreement; (ii) written notice is given by either Party to the other Party at least sixty (60) days before the end of the Initial Service Term or any Renewal Term; or (iii) the Parties agree otherwise in writing. If Service(s) continue after expiration of the Initial Service Term or any Renewal Term on a month-to-month basis, Airband may without notice adjust rates for Services to its then-current month-to-month rates. The Initial Service Term and Renewal Terms may be referred to collectively as the “Term.” This Agreement shall terminate upon termination of all Service Orders under the Agreement.
4. **Service Order Procedure.** Each Service Order submitted by Customer and accepted by Airband shall be executed by the Parties pursuant to the terms herein and shall become part of this Agreement by reference. Service Orders may be submitted via E-mail or via fax. Electronic submission of Service Orders shall constitute execution by and be binding upon Customer, provided Customer has not requested that Airband void said electronic submission within one (1) day of Airband’s issuance of the ORC. Issuance of an ORC shall be Airband’s acceptance of said Service Order and counter-execution thereto; in the event any Service(s) ordered by Customer cannot be provided pursuant to the terms of this Agreement, Airband shall so notify Customer via a Jeopardy Notice (as defined herein).
5. **Credit Approval and Deposits.** All Services are subject to credit approval. Customer shall provide Airband with all credit information requested by Airband. Airband shall establish a credit limit (“Credit Limit”) which will be specified in a rider that shall be incorporated into this Agreement by reference (the “Credit Approval Rider”). A Security Deposit also may be required in the Credit Approval Rider or prior to Airband’s acceptance of any Service Order. In the event the Credit Limit is exceeded, Customer shall, within one (1) business day of receipt of notice from Airband, provide the amount of MRC and unbilled usage charges exceeding the Credit Limit or, at Airband’s option, a cash deposit or other form of security for payment acceptable to Airband (“Security Deposit”). In the event Customer does not respond to Airband’s request within the period specified in this Section, Airband reserves the right to suspend any Services without further notice until Airband’s requirements are met. The Credit Limit is subject to review by Airband at any time and may be adjusted upon written notice to Customer; such adjustment may be made without an amendment hereto. If at any time during the Term of this Agreement there is an adverse change in Customer’s financial condition, business prospects or payment history, which shall be determined by Airband in its sole and reasonable discretion, Airband may demand that Customer provide Airband with a Security Deposit, or increase the amount of the Security Deposit, as security for the full and faithful performance of Customer of the terms, conditions and covenants of this Agreement.
6. **Billing and Payment.**
 - A. **Billing.** Unless otherwise indicated in the Credit Approval Rider, Airband may invoice Customer for Dedicated Services on a monthly basis in advance. The first invoice may be for the month (or any portion thereof) in which the Service Activation Date occurs plus the next full month’s charges plus any NRC not otherwise invoiced. Each invoice thereafter shall be for the following month. Unless otherwise indicated in the Credit Approval Rider, pursuant to Section 5, or agreed to by the Parties, Customer will be invoiced for Usage-based Services on a monthly basis after the Services have been provided.
 - B. **Payment.** Invoices for Services are due and payable in U.S. dollars within twenty-five (25) days after the date of the invoice (each a “Due Date”). Payments for Services not received by the applicable Due Date are past due. Airband may offset any amounts owed to Airband by Customer under this Agreement against any amounts owed to Customer by Airband under any agreement. In addition, Customer shall be responsible for any and all additional charges arising from (1) costs of relocation of Airband Equipment upon Customer’s request submitted after any portion of installation has begun and approved by Airband; and (2) charges incurred for maintenance or diagnostics if a service issue was caused by equipment not provided by Airband or not caused by the acts or omissions of Airband.
 - C. **Late Payments.** If any amount payable under this Agreement that is not received by Airband by the applicable Due Date, Airband may take one or more of the following actions: (i) apply a late charge each day equal to the rate of one and one-half percent (1½%) per month (or the maximum legal rate) of the unpaid balance beginning on the applicable Due Date; (ii) require a Security Deposit; (iii) suspend Services; and (iv) take any action in connection with any other right or remedy Airband may have under the Agreement, at law, or in equity. Suspension of Services or termination of this Agreement shall not relieve Customer of its obligation to pay all amounts under this Agreement. If Services are suspended as a result of nonpayment and subsequently reconnected, in addition to late payment charges, Customer will be required to pay a reconnection fee of \$100.00 and may be required to make reasonable deposits or assurances of payment.
7. **Billing Disputes.** If Customer disputes in good faith any portion of any Airband invoice, Customer shall submit to Airband, by the Due Date for such portion, full payment of the undisputed portion of the invoice and complete written documentation identifying and substantiating the disputed amount. If Customer does not report a dispute by the applicable Due Date that includes all this documentation, Customer shall have waived its right to dispute any portion of that invoice. Airband and Customer agree to use their respective good faith efforts to resolve any dispute within thirty (30) days after Airband receives written notice of the dispute from Customer. Any disputed amounts resolved in favor of Customer shall be credited to Customer’s account on the next invoice following resolution of the dispute. Any disputed amounts determined payable to Airband shall be due within ten (10) days of the resolution of the dispute. Any dispute arising out of or relating to this Agreement that has not been resolved by the Parties shall be settled by binding arbitration conducted expeditiously in accordance with the Agreement.

8. **Bankruptcy.** In the event of bankruptcy or insolvency of either Party, or if either Party shall make any assignment for the benefit of creditors or take advantage of any act or law for the relief of debtors, the other Party to this Agreement shall have the right to terminate this Agreement without prior notice and without further obligation or liability on its part except for amounts due under this Agreement.
9. **Regulatory Fees and Taxes.** The amounts payable by Customer under the Agreement do not include any Taxes. Customer is solely responsible for all Taxes paid by Airband that relate in any way to this Agreement and shall reimburse Airband for all such amounts set forth on invoices submitted to Customer. Customer is responsible for properly charging Taxes to its customers and for the proper and timely reporting and payment of Taxes to the taxing authorities and shall defend and indemnify Airband from payment and reporting of all Taxes relating in any way to this Agreement. Such indemnification includes costs and expenses (including reasonable attorneys' fees, costs and expenses of any kind) incurred by Airband in settling, defending or appealing any claims or actions brought against Airband relating to these taxes, fees or surcharges. With respect to Taxes, and if applicable, prior to ordering Services under this Agreement, Customer shall furnish to Airband valid and appropriate tax exemption certificates for all applicable jurisdictions (federal, state and local) in which it performs Customer billing. If Customer fails to provide and maintain the required certificates, Airband may charge Customer and Customer shall pay the applicable taxes as Airband may be by law required or permitted to collect or pay until such time that Customer provides said certificates. Customer shall indicate exemption status on a Tax Exemption Statement form available from Airband upon written request.
10. **Limitation of Liability.** NOTWITHSTANDING ANY OTHER PROVISION OF THE AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, RELIANCE, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING DAMAGES FOR LOST PROFITS, LOST REVENUES OR COST OF PURCHASING REPLACEMENT SERVICES) ARISING OUT OF OR RELATING TO THIS AGREEMENT. ADDITIONALLY, AIRBAND SHALL NOT BE LIABLE TO CUSTOMER FOR ANY DAMAGES IN EXCESS OF THE AGGREGATE AMOUNT AIRBAND HAS COLLECTED FROM CUSTOMER IN THE TWELVE MONTHS IMMEDIATELY PRIOR TO THE DATE CUSTOMER PRESENTS THE CLAIM TO AIRBAND. FURTHERMORE, IN NO EVENT SHALL AIRBAND BE LIABLE TO CUSTOMER, EITHER IN CONTRACT OR IN TORT, FOR PROTECTION FROM UNAUTHORIZED ACCESS OF CUSTOMER OR AIRBAND TRANSMISSION FACILITIES OR CUSTOMER PREMISE EQUIPMENT; OR FROM UNAUTHORIZED ACCESS TO OR ALTERATION, THEFT OR DESTRUCTION OF CUSTOMER DATA FILES, PROGRAMS, PROCEDURE OR INFORMATION THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES, OR ANY OTHER METHOD.
11. **Disclaimer of Warranties.** UNLESS OTHERWISE SPECIFIED HEREIN, AIRBAND MAKES NO WARRANTY TO CUSTOMER OR ANY OTHER PERSON OR ENTITY, WHETHER EXPRESS, IMPLIED OR STATUTORY, AS TO ANY INFRINGEMENT, DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS OR FITNESS FOR ANY PURPOSE, OF ANY SERVICE PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH WARRANTIES BY AIRBAND ARE HEREBY EXCLUDED AND DISCLAIMED.
12. **Indemnity.** Each Party shall indemnify, defend, release and hold harmless the other Party from any claims by third parties and expenses related thereto (including legal fees, expert witness fees, paralegal fees, court costs and any other expenses) arising from damage to tangible property, personal injury or death caused by such Party's negligence or willful misconduct. In the event a claim relates to the negligence of both Parties, the relative burden of the claim shall be attributed equitably between the Parties in accordance with the principles of comparative negligence. In the event any action is brought against the indemnified Party, such Party shall immediately notify the indemnifying Party in writing, and the indemnifying Party, upon request, shall assume the defense on behalf of the indemnified Party and be solely responsible for all associated expenses related thereto. The indemnifying Party shall pay all expenses incurred by and satisfy all judgments rendered against the indemnified Party, provided that the indemnifying Party shall not be liable for any settlement effected without its written consent.
13. **Content and Use.** Airband provides telecommunications transport Services; Airband does not operate or control the content transported. Airband shall not (i) have any liability or responsibility for the content of any communication transmitted via the Services; (ii) have any obligation or liability to Customer or to any third party for any unlawful or improper use of Services or violation of the AUP by or through Customer; nor (iii) have any duty or obligation to exercise control over the use of, or the content or information passing through, the Service. Customer shall defend, indemnify and hold harmless Airband from any and all claims (including claims by governmental entities seeking to impose penal sanctions) expenses related thereto (including legal fees, expert witness fees, paralegal fees, court costs and any other expenses) related to such content, and from any and all third-party claims and expenses related thereto (including legal fees, expert witness fees, paralegal fees, court costs and any other expenses) related to Customer's use of Services hereunder. Customer shall make no claim against Airband regarding said content, or respecting any information, product, service, software or other item(s) ordered through or provided by Customer or virtue of the Internet. Customer grants Airband a non-exclusive right and license to use, adapt, display, perform and distribute Customer Data only to the extent necessary so that Airband may fully perform the testing and analysis of its Services and its obligations under this Agreement. Use of the Services is subject to Airband's Acceptable Use Policy ("AUP") which may be found at www.airband.com/miscellaneous/airbands-acceptable-use-policies. In the event of violation of this section by Customer or, in Airband's sole judgment, Customer or anyone using the Service violates this section, and such violation or failure to comply poses an immediate threat of harm to or destruction of Airband's network, violates existing law or regulation, or puts Airband's network at any risk with any of its providers or other customers, Airband shall have the right to take any and all steps reasonably necessary to remove such threat, including suspending Services or terminating this Agreement immediately and without notice. Unless prohibited by law or requested by any form of law enforcement, Airband will use commercially reasonable efforts to notify Customer of service suspension. Customer and Customer's Affiliates shall indemnify, defend, and hold harmless Airband for violation of the AUP. All requests for the use of third-party mail servers shall be subject to Airband's sole approval.
14. **Equipment and Software.** Unless otherwise agreed by the parties in writing, Customer shall not acquire any ownership rights in any equipment Airband provides for Customer to use to facilitate Customer's receipt of Services ("Airband Equipment"). Airband may use any combination of Airband Equipment it chooses to deliver the Services, whether the Airband Equipment is for wireless, wired, or any other means of transmission or delivery. Airband Equipment is personal property of Airband or its suppliers and is not a part of the real estate on which it may be situated. Customer disclaims any liens on, claims to, or interest in the Airband Equipment and the proceeds thereof and agrees not to assert any claim against the Airband Equipment or proceeds thereof. Airband shall have the right to upgrade, modify and enhance Airband Equipment and software from time to time through "downloads" from Airband's network or otherwise. Customer shall not make any addition, alteration or remove Airband Equipment without the written consent of Airband. Failure by Customer to permit the retrieval of Airband Equipment within thirty (30) days of disconnection of Services will result in invoice to the Customer for the replacement value of the non-recovered Airband Equipment. To the extent any software is licensed (or sublicensed) to Customer by Airband, the software is provided for the limited purpose of facilitating Customer's use of the Services as described in this Agreement and Customer hereby agrees to comply with any software licenses or agreements governing the third party software. Customer shall not engage in, or permit, any additional copying, or any translation, reverse engineering or reverse compiling,

disassembly or modification of or preparation of any derivative works based on any software provided by Airband, all of which are prohibited. Customer shall, as directed by Airband, return to Airband or destroy all software provided by Airband and any related written materials, promptly upon termination of the associated Services for any reason.

15. **Access and Waiver.**

A. **Access.** Customer shall make all necessary preparations and obtain all necessary permissions, rights, and authorizations for the installation, maintenance, removal, and operation of the Services and Airband Equipment and shall provide Airband all necessary access to all premises and portions thereof necessary to provide the Services and perform installation, maintenance, removal, and operation of any associated equipment and materials. Customer hereby authorizes Airband to make any preparations to any premises necessary for the installation, maintenance, removal, or operations of any equipment used to provide the Services. Airband shall not be liable for any effects of normal Services installation and workmanship, such as holes in walls, which may remain after installation or removal of the Airband Equipment, except for damage caused by gross negligence on the part of Airband. Customer shall provide Airband and its authorized agents access at all times before and after the Term to all premises necessary for installation of Services upon reasonable notice to install, connect, inspect, maintain, repair, replace, alter or disconnect or remove the Airband Equipment. All such access may be restricted to business hours unless access is requested for emergencies or to attempt to correct Service performance issues, in which case access at all times shall be granted by Customer. Airband may place equipment and cables on Customer's premises to facilitate the provision of Services to Customer and to other locations. The access license granted under this Section will survive the termination of this Agreement until the date that is one year from the date on which Customer first notifies Airband in writing that Customer is revoking this license, which in no event shall be during the Term of this Agreement.

B. **Lenders.** Customer understands that certain Airband Equipment is or may be financed for Airband by certain lending institutions and other lenders who may be parties to such agreement ("**Lenders**"), including the administrative agent who may act on behalf of the Lenders through one or more agreements (as amended or modified from time to time). Upon twenty-four (24) hours prior notice, Customer will permit each Lender, its representatives, or both, to access within business hours Airband Equipment to which the Lender has rights, to inspect or to remove the Airband Equipment, and Customer waives any rights to prevent such access or removal.

16. **IP Addresses.** Customer will not acquire any proprietary rights in any IP address or IP address blocks assigned by Airband. Airband reserves the right to change or remove any and all such IP addresses or IP address blocks at any time. Airband will notify Customer thirty (30) days in advance of any such changes. Upon expiration, cancellation or termination of the Service Order for which the addresses were assigned, Customer shall relinquish all IP addresses or IP address blocks assigned by Airband.

17. **Customer Responsibilities.** Customer will be solely responsible for maintaining adequate security, including ensuring that precautions are in place to protect user name and password information for Customer's account. Customer shall be responsible for any unauthorized use of any user name, password or Customer account or information, and Customer shall immediately notify Airband in writing if any user name, password, or other account information is lost, stolen, or otherwise compromised. Customer shall upgrade and maintain any Customer-provided equipment as necessary to support the Services and if requested, provide the necessary space, conduit and electrical power required to maintain the facilities and Airband Equipment used to provide the Services to Customer.

18. **Legal Construction.** The terms and conditions of the Agreement, constitute the entire agreement between Airband and Customer pertaining to the subject matter hereof and supersede all prior and contemporaneous agreements and understandings in connection

herewith, whether written, oral, electronic, or otherwise. In the event of any conflict between these General Terms and Conditions, any Service Supplement, and those of any Service Order, these General Terms and Conditions shall prevail over the Service Supplement, which shall prevail over the Service Order; except that in the event of any conflict between rates in the applicable Service Order and any other part of the Agreement, the Service Order shall prevail. Headings of sections are for convenience only and have no legal force or effect. The term "including" shall in every instance mean "including but not limited to." This Agreement shall be governed by the laws of the state of Texas without regard to its principles of choice of law.

19. **Binding Arbitration.** The Parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement promptly through discussions between themselves at the operational level. In the event a resolution cannot be reached at the operational level, the disputing Party shall give the other Party written notice of the dispute, and such controversy or claim shall be negotiated between appointed counsel or senior executives of the Parties who have authority to settle the controversy. If the Parties fail to resolve such controversy or claim within thirty (30) days of the disputing Party's notice, either Party may seek arbitration as set forth below.

Any controversy or claim arising out of or relating to this Agreement, or a breach of this Agreement, shall be finally settled by arbitration in Dallas, Texas and shall be resolved under the laws of the State of Texas. The arbitration shall be conducted before a single arbitrator in accordance with the commercial rules and practices of the American Arbitration Association then in effect.

Any award, order or judgment pursuant to such arbitration shall be final and binding and may be enforced in any court of competent jurisdiction. The Parties agree that the arbitrator shall have no power or authority to make awards or issue orders of any kind except as expressly permitted by this Agreement, and in all events shall be limited by all limitations of liability in the Agreement. The arbitrator may, as part of the arbitration award, permit the substantially prevailing Party to recover all of its attorneys' fees and other costs and expenses of any kind incurred in connection with such arbitration, including expert witness fees, legal assistant fees, paralegal fees and all other expenses of counsel. All arbitration proceedings shall be conducted on a confidential basis.

20. **Termination.**

A. **Termination by Customer for Cause.** If Airband fails to perform a material obligation under this Agreement and does not remedy such failure within thirty (30) days following receipt of written notice from Customer reasonably describing the failure ("**Airband Default**"), Customer may terminate this Agreement and any Service without any further liability except for the payment of all accrued but unpaid charges up to the date of termination. If Airband is unable to provide Service(s) for ninety (90) consecutive days due to a Force Majeure Event as defined in Section 24, *Force Majeure*, Customer may terminate the affected Service(s) without liability upon written notice, except for all accrued but unpaid charges up to the date of termination.

B. **Termination by Customer for Convenience.** Customer may, at any time and without cause, terminate this Agreement or any Service Order upon thirty (30) days written notice to Airband, provided the following: (i) if Customer terminates this Agreement or any Service prior to the applicable Service Activation Date(s), Customer shall reimburse Airband for all costs of implementation of terminated Service(s); and (ii) if Customer terminates this Agreement or any Service on or after the applicable Service Activation Date(s), Customer immediately shall pay Airband upon demand (a) all charges for Service(s) previously rendered, including any NRC, (b) for Dedicated Service(s) (as defined herein), the MRC for the terminated Services times the number of months remaining in the Initial Service Term(s) or Renewal Term, as applicable. Customer acknowledges that Airband will suffer damages if this Agreement or any Service is terminated prior to the expiration of the Initial Service Term or any Renewal Term as the case may be and that the damages incurred by Airband are difficult if not impossible to calculate and the aforementioned payment is a genuine and reasonable pre-estimate of liquidated damages that Airband will suffer and not a penalty.

C. **Termination Due To Performance Impairment.** If Customer is prevented from completing calls or transmitting and receiving IP packets due to an intervening cause or physical barrier (for example, a fiber cut or if a building is constructed that interferes with the line of sight) (each an "**Impairing Condition**"), Airband will use good faith efforts to remedy the Impairing Condition as soon as possible. If Airband is unable to restore Service within 72 hours after opening by Customer of a trouble ticket with Airband, Customer may terminate the affected Services without further obligation and without payment of any liquidated damages or other charges or amounts except for all accrued but unpaid charges up to the date of termination. Termination for an Impairing Condition as set forth in this Section 20.C shall be Customer sole and exclusive remedy for any Impairing Condition.

D. **Termination by Airband.** Airband may terminate this Agreement or any Service with no further liability if (i) Customer fails to make any payment as required under this Agreement and such failure remains uncorrected for five (5) calendar days following receipt of written notice from Airband, (ii) Customer fails to perform any other material obligation under this Agreement and does not remedy such failure within thirty (30) days following receipt of written notice from Airband (each of (i) and (ii) hereinafter collectively referred to as "**Customer Default**"), or (iii) it is commercially unreasonable for Airband to provide the Services. In the event of a Customer Default, Airband shall have the right to do any one or more of the following: (i) suspend Service(s) to Customer; (ii) cease accepting or processing Service Orders; and (iii) terminate this Agreement or any Service. If this Agreement or any Service is terminated due to a Customer Default, Customer shall remain liable for charges outlined in Section 20.B herein. Customer agrees to pay Airband's reasonable expenses (including attorney fees, paralegal fees, expert witness fees, court costs, and collection agency fees) incurred in enforcing Airband's rights in the event of a Customer Default.

E. **Effect of Termination.** Upon the date of termination, all of Customer's rights and Airband's obligations to perform the Services will immediately terminate, and Customer's payment obligations accrued hereunder through the date of termination plus any liquidated damages due under Section 20.B will become immediately due and payable. Except for payment obligations owed Airband for Services rendered in accordance with this Agreement prior to the date of termination and liquidated damages due under Section 20.B, Customer shall not incur any charges, penalties, liquidated damages or any other amounts due to exercise of its right to terminate pursuant to this Agreement. The Parties will also return to one another upon request any property, or information, belonging to the other party or its licensors or agents. After termination, Airband will retain the IP addresses or address blocks assigned by Airband.

21. **System Maintenance.** In the event Airband determines that it is necessary to interrupt Service(s) or that there is a potential for Service(s) to be interrupted for the performance of system maintenance, Airband will use good-faith efforts to notify Customer prior to the performance of such maintenance and will schedule such maintenance to begin during non-peak hours (midnight to 6 a.m. local time). In no event shall interruption for system maintenance constitute an Impairing Condition, failure of performance by Airband, nor make Customer eligible for any credits under the Agreement.
22. **Maintenance Charges and Ancillary Fees.** Airband is responsible for maintaining its network. However, if the work requiring maintenance is determined to be caused by some reason other than Airband's network, Customer may be charged for maintenance work requested. Customer shall pay any maintenance charges incurred by Airband on Customer's behalf provided the work requiring maintenance is not cause by Airband's network.

Non-recurring charges for other ancillary Services, including new order installation, order changes, order expedite and reconfiguration may apply. In the event that an extended demarc is necessary, an additional charge may apply.

23. **Outage Credits.** Customer will receive credits against future charges pursuant to the terms and conditions in in Airband's Unified Service Level Agreement, which can be found at [www.airband.com/wp-](http://www.airband.com/wp-content/uploads/sla.pdf)

[content/uploads/sla.pdf](http://www.airband.com/wp-content/uploads/sla.pdf). Such credit(s) and remedies shall be Customer's sole and exclusive remedy with respect to all performance and service issues relating to the affected Service(s). No such credits shall be allowed and Airband shall not be liable for any service interruption caused by any Force Majeure Event.

24. **Force Majeure.** Neither Party shall be liable to the other, nor in default under this Agreement if and to the extent that such Party's performance of this Agreement is delayed or prevented by any Force Majeure Event except for payments. For purposes hereunder, the term "**Force Majeure Event**" means an event that is beyond the reasonable control of the Party affected and occurs without such Party's fault. Without limiting the foregoing, Force Majeure Event includes acts of God, fire, explosion, vandalism, flood, storm, or other similar catastrophe; terrorism, shortage of materials or any equipment; failure of the Internet or cable cut not caused by Airband's employees or contractors; any law, order, regulation, direction, action or request of any governmental entity having jurisdiction over either of the Parties, or court, civil or military authority or any other instrumentality of one or more of said governmental agencies; national emergencies, insurrections, riots, wars, acts of terrorism, strikes, lockouts or work stoppages.
25. **Confidential Information.** "**Confidential Information**" shall mean all information disclosed in writing by one Party to the other Party that is clearly marked "**CONFIDENTIAL**" or "**PROPRIETARY**" by the disclosing Party at the time of disclosure. Notwithstanding the foregoing, all information concerning either Party's traffic volume or distribution, pricing, customer lists and financial information is confidential and proprietary regardless of whether it is so identified and regardless of whether it was disclosed orally or in writing. Confidential Information does not include any information that (i) was already known by the receiving Party free of any obligation to keep it confidential at the time of its disclosure; (ii) becomes publicly known through no wrongful act of the receiving Party; (iii) is rightfully received from a third person without knowledge of any confidential obligation; (iv) is independently acquired or developed without violating any of the obligations under this Agreement; or (v) is approved for release by written authorization of the disclosing Party.

A recipient of Confidential Information shall not disclose the information to any person or entity except for the recipient, its affiliates, employees, contractors and consultants or any combination thereof, who have a need to know such Confidential Information. The recipient may disclose Confidential Information pursuant to a judicial or governmental request, requirement or order; provided that the recipient take all reasonable steps to give the disclosing Party prior notice sufficient to contest such request, requirement or order if permitted.

Except as set forth in this Section 25, Confidential Information shall not be disclosed to any third Party without the prior written consent of the owner of the Confidential Information. The recipient shall use Confidential Information only for purposes of this Agreement and shall protect Confidential Information from disclosure using the same degree of care used to protect its own Confidential Information, but in no event less than a reasonable degree of care.

Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed upon request of the disclosing Party. Either Party may make Confidential Information available to its lenders, financial advisors, or both, provided said lenders or financial advisors are bound by written confidentiality agreement(s). Because money damages may be insufficient in the event of a breach or threatened breach of the foregoing provisions, the affected Party may be entitled to seek an injunction or restraining order in addition to such other rights or remedies as may be available under this Agreement, at law or in equity, including money damages.

26. **Press Release and Authorized Use of Name.** Neither Party may use the other Party's name or trademarks, or issue any publicity or make any public statements concerning the other Party or the existence or content of this Agreement, without the other Party's prior written consent. Notwithstanding the foregoing sentence, Customer agrees that during the Term of this Agreement Airband may use Customer's name and logo in Airband sales presentations or during calls with financial analysts, industry analysts or investors, without Customer's prior written consent,

- but only for the purposes of identifying the Customer as a customer of Airband. Customer may use Airband's name and logo to identify Airband as a supplier to Customer. Notwithstanding anything to the contrary herein, without the other Party's prior written consent, neither Party shall refer to itself as an authorized representative of the other Party or use the other Party's logos, trademarks, service marks, carrier identification codes (CICs), or any variation thereof in any advertising or other promotional materials, or in any activity using or displaying the other Party's name or Service(s) to be provided hereunder. Each Party agrees to change or correct at its own expense any material or activity the affected Party determines to be inaccurate, misleading or otherwise objectionable under this section.
27. **Assignment.** Neither Party hereto may assign this Agreement without the express written consent of the other Party, which consent shall not be unreasonably withheld, except that so long as the assignee can fully perform the Assignor's duties and obligations under this Agreement, a Party may assign all, but not part of, its rights and obligations hereunder to: (i) any of its Affiliates; (ii) any entity that results from a merger or consolidation with such Party; or (iii) any purchaser or other acquirer of substantially all of such Party's assets or equity. No assignment of obligations shall relieve the assignor of any liability or obligation hereunder unless otherwise agreed to in writing by the Parties.
 28. **Subject to Laws.** Both Parties shall comply with and give all notices required by of it by any applicable federal, state or local laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of this Agreement. Each Party agree to obtain and maintain all required certifications, permits, licenses, approvals or authorizations imposed by any regulatory or governmental body necessary for such Party to perform its duties under the Agreement. Each Party agrees to provide the other Party with copies of documentation for such compliance within ten (10) days of receipt of written request by the other Party. Each Party shall protect, indemnify and hold harmless the other Party from any and all claims, losses, demands, causes of action, and any and all related costs and expenses of every kind arising from the other Party's violation of this section.
 29. **Notices.** All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given as of the date of delivery or confirmed facsimile delivery. If mailed, notice shall be sent via commercial overnight courier. The date of delivery for via overnight courier shall be the date set forth in the courier's records. The date of delivery via facsimile shall be the date the sender receives written confirmation of delivery. To be effective, written notice of any material breach (except payment default) must prominently state that the correspondence is a formal notice of breach and must be sent via commercial overnight courier service. Notices shall be sent to the Parties' respective addresses set forth on the Service Order.
 30. **Counterparts.** A Service Order and any documents required to be executed under this Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and when taken together shall constitute one document. The Parties expressly authorize the use of a facsimile counterpart as a valid method of execution for Customer so that Airband may begin processing pending Service Orders; in the event that Customer executes documents via facsimile counterpart, Customer agrees to provide Airband with a fully executed original of this the document within five (5) calendar days of such facsimile execution. For valid execution by Airband, Airband's original signature shall be required.
 31. **Waiver of Breach or Violation Not Deemed Continuing.** The waiver of either Party of a breach or violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach or violation hereof.
 32. **Business Relationship.** This Agreement shall not create any agency, employment, joint venture, partnership, representation or fiduciary relationship between the Parties. Neither Party shall have the authority, nor shall any Party attempt, to create any obligation on behalf of the other Party.
 33. **Survival.** The covenants and understandings contained in this Agreement with respect to payment of amounts due, confidentiality, liability and indemnification shall survive any termination of this Agreement. The rights and obligations under this Agreement shall survive any merger or sale of either Party and shall be binding upon the successors and assigns of each Party.
 34. **Amendments/Riders.** Unless otherwise specified herein, this Agreement may be modified or supplemented only by an instrument in writing executed by each Party.
 35. **General Definitions.** Unless indicated otherwise, terms in this section shall be defined as follows: "Activation Date" or "Service Activation Date" means the date, following Airband's installation and testing, that Service is first made Available to Customer for use; billing commences on such date. "Affiliate" means any entity controlled by, in control of, or under common control of a Party hereunder. [For purposes of the preceding sentence, "control" means having the beneficial ownership, directly or indirectly, of the voting power to elect directors having a majority of votes that directors may cast (in the case of a corporation) or managers, trustees, agents or representatives performing a similar function (in the case of an entity that is not a corporation) or the power to otherwise direct management of such entity.] "Airband" refers to Airband Communications, LLC and its Affiliates providing all or portions of the Services. "Agreement" refers collectively to these General Terms and Conditions, all Service Orders accepted by Airband, all Service Supplements for all products ordered under such Service Orders and all otherwise incorporated herein or in any Service Order or Service Supplement by reference. "Available" means all necessary equipment for Service has been installed. "Customer Data" means all text, pictures, sound, graphics, video and other data supplied by Customer. "Dedicated Service" means Services for which Customer pays each month a set fee regardless of the amount of usage of such Services. "End User" means any customer of Customer. "FOC" means Firm Order Confirmation, the form Airband submits to Customer indicating Airband's acceptance of Customer's Service Order and the date that Service(s) ordered will be activated. "Jeopardy Notice" is the form Airband submits to Customer indicating Airband's rejection of Customer's Service Order for reasons outlined in this Agreement. "Monthly Recurring Charge(s)" or "MRC" means the mutually agreed upon monthly charge for dedicated Services. "Non-Recurring Charge(s)" or "NRC" means installation fee(s) and other one-time charges. "Order Receipt Confirmation" or "ORC" refers to electronic mail from Airband indicating receipt and explicitly stating acceptance of Customer's Service Order. "Parties" refers collectively to Airband and Customer. "Party" refers individually to either Airband or Customer. "Service" means usage-based and dedicated telecommunications products offered by Airband and specifically refers to Services that Customer may order or purchase under this Agreement. "Service Order" means the form promulgated by Airband that Customer submits to Airband detailing Service(s) Customer wishes to order from Airband; the Service Order shall include rates and the initial Service Term for said Service(s) and, when applicable, rates for ancillary Service(s) Customer may order. "Taxes" shall mean any federal, state or local sales, use, excise, occupational, or utility taxes (other than taxes on Airband's net income), surcharges, penalties, interest, late charges or fees of any kind and however designated which may be levied on or assessed because of the goods, services, or any combination thereof provided by Airband, including fees for Common Carrier Service Charges and Payphone Compensation Universal Service Fees (state and federal), Lifeline Assistance, Telecommunications Relay Service, gross receipts taxes, surcharges, franchise fees and any other taxes (and penalties and interest thereon).

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